रजिस्ट्री सं. डी.एल.—33001/98 REGISTERED NO. D. L.—33001/98

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
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सं० 29] नई दिल्ली, शनिवार, जुलाई 18, 1998/आषाढ 27, 1920
No. 29] NEW DELHI, SATURDAY, JULY 18, 1998/ASADHA 27, 1920

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 29 जून, 1998

का. आ. 1402.—केन्द्रीय सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री बी. एल. कालरा, अधिवक्ता, दिल्ली को महानगर मजिस्ट्रेट/अपर जिला और सेशन न्यायाधीश/जिला और सेशन न्यायाधीश, दिल्ली/नई दिल्ली के न्यायालय में मामला सं. आर सी 3 (एस)/97 सीबीआई/एसआईसी-IV/नई दिल्ली (उपहार सिनेमा मामला) तथा अपील अथवा पुनरीक्षण न्यायालय में अपीलों, पुनरीक्षणों और किसी अन्य न्यायालय में उनसे संबंधित अथवा आनुषंगिक किसी अन्य विषय का संचालन करने के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[सं. 225/2/98-ए. वी. डी.-II]

हरि सिंह, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSION

(Department of Personnel & Training)

New Delhi, the 29th June, 1998

S.O. 1402.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri B.L. Kalra, Advocate, Delhi as Special Public Prosecutor for conducting Case No. RC-3(S)/97/CBI-SIC/IV/New Delhi (Uphaar Cinema Case) in the Court of Metropolitan Magistrate/Additional District and Sessions Judge/District and Session Judge, Delhi/New Delhi and appeals, revisions in the appellate or revisional Court and any other matter connected therewith or incidental thereto in any other Court.

[No. 225(2)98-AVD-II]

HARI SINGH, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 25 जून, 1998

स्टाम्प

का. आ. 1403. —भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा हिन्दुस्तान कापर लि., कलकत्ता को मात्र बारह लाख सत्ताइस हजार रुपये का समेकित मुल्क स्टाम्प अदा करने की अनुमति प्रदान करती है जो हिन्दुस्तान कापर लि., कलकत्ता द्वारा 31-5-1998 को निजी तौर पर आबंटित किए गए बारह करोड़ सत्ताइस लाख रुपये के समग्र मूल्य के 006334 से 007560 तक की विशिष्ट संख्या वाले एक-एक लाख रुपये के प्रोमिसरी नोटों के स्वरूप के सुरक्षित बांडो पर स्टाम्प शुल्क के रूप में प्रभार्य है।

[सं. 23/98—स्टाम्प/फा. सं. 15/15/98—वि. क.]

एम. कुमार, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 25th June, 1998

STAMPS

S.O. 1403.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby Permits Hindustan Copper Limitted, Calcutta to pay consolidated stamp duty of rupees twelve lakhs twenty seven thousands only chargeable on account of the stamp duty on Privately Placed Secured Bonds in the form of promissory notes of rupees one lakh each bearing distinctive numbers from 006334 to 007560 aggregating to rupees twelve crores twenty seven lakh only allotted on 31-5-1998 by Hindustan Copper Limited, Calcutta.

[No. 23/98-STAMPS/F. No. 15/15/98-ST]

S. KUMAR, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 30 जून, 1998

का. आ. 1404.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 17 की उपधारा (4खख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, कम्पनी अधिनियम, 1956 (1956 का 1) के तहत कम्पनी के रूप में दर्ज एस बी आई गिल्टस लि., गिल्ट सिक्योरिटी ट्रेडिंग कार्पोरेशन आफ इंडिया लि., पी एन बी गिल्ट्स लि. तथा आई.सी.आई.सी.आई.सिक्योरिटी एंड फाइनेंस कम्पनी लि. नामक चारों वित्तीय संस्थाओं को उक्त उपधारा के प्रयोजनार्थ अधिसूचित करती है ।

[सं० 15/4/98-बी ओ ए]

श्रीमती पी. मोहन, निदेशक (बीओ)

(Department of Economic Affairs)
(Banking Division)

New Delhi, the 30th June, 1998

S.O. 1404.—In exercise of the powers conferred by sub-section (4-BB) of Section 17 of the Reserve Bank of India Act, 1934 (2 of 1934), the Central Government hereby notifies the four financial institutions known as SBI Gilts Ltd., Gilt Securities Trading Corporation of India Ltd., PNB Gilts Ltd. and ICICI Securities and Finance Company Ltd. all being companies registered under the Companies Act, 1956 (1 of 1956) for the purposes of the said Sub-section.

[No. 15/4/98-BOA]

Mrs. P. MOHAN, Director (BO)

नई दिल्ली, 1 जुलाई, 1998

का.आ. 1405.—भारतीय औद्योगिक विकास बैंक अधिनियम, 1964 (1964 का 18) की धारा 6 की उपधारा (1) के खंड (क) और उपधारा (2) के अनुसरण में, केंद्रीय सरकार, एतद्द्वारा, श्री जी. पी. गुप्ता, वर्तमान अध्यक्ष भारतीय युनिट ट्रस्ट को 1 जुलाई 1998 से 31 जनवरी, 2001 तक की अवधि के लिए भारतीय औद्योगिक विकास बैंक के अध्यक्ष एवं प्रबंध निदेशक के रूप में नियुक्त करती है।

[सं. एफ. 7/2/98-बी. ओ.-I]

एम दामोदरन, संयुक्त सचिव

New Delhi, the 1st July, 1998

S.O. 1405.—In pursuance of clause (a) of sub-section (1) and sub-section (2) of Section 6 of the Industrial Development Bank of India Act, 1964 (18 of 1964) the Central Government hereby appoints Shri G. P. Gupta, presently Chairman, Unit Trust of India, as the Chairman and Managing Director, Industrial Development Bank of India with effect from 1st July, 1998 and upto 31st January, 2001.

[F. No. 7|2|98-B.O.I.]

M. DAMODARAN, Jt. Secy.

नई दिल्ली, 6 जुलाई, 1998

का० आ० 1406.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार भारतीय रिजर्व बैंक की सिफारिश पर घोषणा करती है कि उक्त अधिनियम की धारा 11 की उपधारा 1 के उपबंध सरकारी राजपत्र मे इस अधिसूचना की प्रकाशन की तारीख से 31 मार्च, 2001 तक जिला सहकारी केन्द्रीय बैंक लि., नं. एम 210, श्रीकाकुलम पर लागू नहीं होंगे ।

[सं० 1(22)/98-ए० सी०]

एस० के० ठाकुर, अवर सचिव

New Delhi, the 6th July, 1998

S.O.1406.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendations of the Reserve Bank of India declares that the provisions of sub-section 1 of Section 11 of the said Act shall not apply to the District Co-operative Central Bank Ltd., M-210, Srikakulam from the date of publication of this notification in the Official Gazette to 31 March, 2001.

[F. No. 1(22)|98-AC]

S. K. THAKUR, Under Secy.

नई दिल्ली, 6 जुलाई, 1998

का०आ० 1407.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, घोषणा करती है कि उक्त अधिनियम की धारा 11 की उपधारा 1 के उपबंध सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से 31 मार्च, 2000 तक दि कोटा केन्द्रीय सहकारी बैंक लि०, कोटा पर लागू नहीं होंगे ।

[सं० 1(24)/98-ए० सी०)]

एस० के० ठाकुर, अवर सचिव

New Delhi, the 6th July, 1998

S.O. 1407.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendations of the Reserve Bank of India declares that the provisions of sub-section 1 of Section 11 of the said Act shall not apply to The Kota Central Co-operative Bank Ltd., Kota from the date of publication of this notification in the Official Gazette to 31 March, 2000.

[F. No. 1(24)|98-AC]

S. K. THAKUR, Under Secy.

मानव संसाधन विकास मंत्रालय

(शिक्षा विभाग)

नई दिल्ली, 1 जुलाई, 1998

का. आ. 1408—सार्वजनिक स्थान अधिनियम, 1971 (1971 का 40) (अनाधिकृत रूप से कब्जा करने वालों को बेदखली) की धारा-3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा मानव संसाधन विकास मंत्रालय (शिक्षा विभाग) के दिनांक 8 मई, 1989 की अधिसूचना का०आ० संख्या 1379 के अधिक्रमण में केन्द्र सरकार एतद्द्वारा मेजर जनरल, एन एस कटोच, विशेष ड्यूटी अधिकारी (सम्पदा) जामिया मिलिया इस्लामिया, को भारत सरकार के राजपत्रित अधिकारी के पदनाम के समतुल्य पद होने के नाते उक्त अधिनियम के उद्देश्यो के लिए सम्पदा अधिकारी नियुक्त करती है, वह सौंपी गई शक्तियों का प्रयोग करेंगे तथा जामिया मिलिया इस्लामिया के प्रशासनिक नियंत्रण के

अन्तर्गत तथा जामिया मिलिया इस्लामिया के परिसर की क्षेत्रीय स्थानीय सीमाओं के संबंध में उक्त अधिनियम द्वारा अथवा उसके अन्तर्गत सम्पदा अधिकारी को सौंपे गये कर्त्तव्यों को पूरा करेगे ।

[सं. एफ 6-8/98-डेस्क (यू)]

के. एल. नंदवानी, डेस्क अधिकारी

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Education)

New Delhi, the 1st July, 1998

S.O. 1408.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), and in supersession of the notification of the Government of India in the Ministry of Human Resource Development (Department of Education), No. S.O. 1379, dated the 8th May, 1989, the Central Government hereby appoints Major General N. S. Katoch, Officer on Special Duty (Estates), Jamia Millia Islamia, being an Officer equivalent, to the rank of a gazetted officer of Government, to be estate officer for the purposes of the said Act, who shall exercise the powers conferred, and perform the duties imposed, on the estate officer by or under the said Act in respect of the public premises within the territorial local limits of Jamia Millia Islamia campus belonging to and under the administrative control of the Jamia Millia Islamia.

[No. F. 6-8/98-Desk(U)]

K. L. NANDWANI, Desk Officer

परमाणु ऊर्जा विभाग

मुंबई, 25 जून, 1998

का.आ. 1409—केन्द्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के पूर्ववर्ती निर्माण आवास और पूर्ति मंत्रालय के का.आ. सं. 1899 तारीख 25 मई, 1967 के अन्तर्गत प्रकाशित अधिसूचना में निम्नलिखित संशोधन करती है, अर्थात् :—

उक्त अधिसूचना की सारणी के स्थान पर निम्नलिखित सारणी रखी जाएगी ,

सारणी

अधिकारी का नाम	सरकारी स्थानों के प्रवर्ग एवं अधिकारिता की स्थानीय सीमाएं
मुख्य प्रशासन अधिकारी, निर्माण, सेवा एवं सम्पदा प्रबंध निदेशालय, विक्रम साराभाई भवन अणुशक्तिनगर मुंबई- 400 094	बृहत्तर मुंबई एवं नई दिल्ली में परमाणु ऊर्जा विभाग का या उसके प्रशासनिक नियंत्रणाधीन स्थान ।

[सं. 5/1(2)/95/एस यू एस/447]

वी. वी. एलियास, अवर सचिव

टिप्पण : मूल अधिसूचना सं. का.आ. 1899, तारीख 25-5-1967 द्वारा भारत के राजपत्र में प्रकाशित की गई थी और तत्पश्चात् उसमें निम्नलिखित द्वारा संशोधन किया गया :—

1. स्वास्थ्य, परिवार योजना, निर्माण, आवास और शहरी विकास मंत्रालय की अधिसूचना सं. का.आ. 4271, तारीख 17-10-1969

2 परमाणु ऊर्जा विभाग की अधिसूचना सं. का.आ. तारीख 18-12-1974

3. परमाणु ऊर्जा विभाग की अधिसूचना सं. का.आ. 2074, तारीख 2-6-1996

4. परमाणु ऊर्जा विभाग की अधिसूचना सं०का०आ० 5/1(2)/95-एसयूएस/333 तारीख 14-5-1974

DEPARTMENT OF ATOMIC ENERGY

Mumbai, the 25th June, 1998

S.O. 1409—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby makes the following amendment in the Notification of the Government of India, in the erstwhile Ministry of Works, Housing and Supply, S.O No. 1899 dated the 25th May 1967; namely :—

In the said notification for the Table, the following Table shall be substituted :

'TABLE'

Designation of the Officer	Categories of Public Premises and local limits of jurisdiction.
Chief Administrative Officer Directorate of Constrution, Services & Estate Management, Vikram Sarabhai Bhavan, Anushakti Nagar, Mumbai-400 094.	Premises belonging to or under the administrative control of the Department of Atomic Energy in Greater Mumbai & New Delhi.

[No. 5/1(2) 95-SUS/447]

V. V. EALIAS, Under Secy.

Note : —The original notification was published in the Gazette of India vide Notification No. S.O. 1899 dated. 25-5-67 and subsequently amended by :—

(1) Ministry of Health, Family Planning, Works Housing and Urban Development, Notification No. S.O. 4271 dated 17-10-1969.

(2) Department of Atomic Energy, Notification No. S.O. 3433 dated 18-12-94.

(3) Department of Atomic Energy, Notification No. S.O. 2074 dated 2-6-1976.

(4) Department of Atomic Energy, Notification No. 5/1(2)95-SUS/331 dated. 14-5-1997.

1840 GI/98—2

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

शुद्धि पत्र

नई दिल्ली, 19 जून, 1998

विषय :—पुणे विश्वविद्यालय की बी.डी.एस. डिग्री।

का.आ. 1410 :—उपर्युक्त विषय पर दिनांक 22 अप्रैल, 1998 को समसंख्यक अधिसूचना के पैरा-2 में निम्नलिखित शुद्धि की जाए :—

पैरा -2 पंक्ति-1

"क्रम संख्या 45" के लिए
"क्रम संख्या 44" पढ़ें।

पैरा-2, तालिका का कालम-1

"क्रम संख्या 46" के लिए
"क्रम संख्या 45" पढ़ें

अन्य विषय-वस्तु अपरिवर्तित रहेगी।

[संख्या बी. 12018/3/96-पी.एम.एस.]

सी.एल. भाटिया, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

CORRIGENDUM

New Delhi, the 19th June, 1998

Subject :—B.D.S. Degree of Pune Uneversity.

S.O. 1410.—In para 2 of the Notification of the even number dated 22nd April, 1998 on the subject mentioned above, the following corrections may be made :

Para 2 Line: 1

For : 'S. No. 45'
Read : 'S. No. 44'

Para 2 Col. 1 of Table

For : 'S. No. 46'

Read : 'S. No. 45'

The other contents remain unchanged.

[No. V. 120018/3/96-PMS]

C. L. BHATIA, Under Secy.

(भारतीय चिकित्सा पद्धति एवं होम्योपैथी विभाग)

[भा. चि. प. (तकनीकी)]

शुद्धि-पत्र

नई दिल्ली, 25 जून, 1998

का आ 1411—भारत के राजपत्र, भाग-2, खंड -3, उपखंड (ii) तारीख 17 फरवरी 1998 में प्रकाशित अधिसूचना सं. का. आ. 518 में आए निम्नलिखित शब्दों को इस प्रकार पढ़ा जाय–

1. पृष्ठ 1, पैरा 1, पंक्ति-6 में "संशोधित" को "संशोधित"
2. पृष्ठ 1, पैरा 2, पंक्ति-2 में "कमलेश्वर" को "कामेश्वर"
3. सं. वी 26015 (1)/92 को वी 26015/1/92
4. पृष्ठ 2, नोट के क्र. सं. 3 मे
   सा. का. 2313 को 2323
5. क्र. सं. 8 में "28 फरवरी" को "20 फरवरी"
6. क्र. सं. 13 मे "1191" को "1911"
7. क्र. सं. 19 और 20 में "1986" को 1986 "द्वारा अन्तःस्थापित की गई।
8. क्र सं. 40 में "923" को "923 (अ)"

[संख्या-वी-26015/1/92-ए ई/आई एस एम (तकनीकी)]

चिरंजी लाल, अवर सचिव

(Department of ISM & H)

[ISM (Tech.)]

CORRIGENDUM

New Delhi, the 25th March, 1998

CORRIGENDUM

S.O. 1411.—In the notification of the Government of India in the Ministry of Health and Family Welfare (Department of Indian System of Medicine and Homoeopathy), number S.O. 518, dated the 17th February, 1998 published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 17th February, 1998 at page 2—

(a) in line 3, for "1978 (48 of 1978)", read "1970 (48 of 1970)".

(b) in line 4, for "ceuntral", read "Central"

(c) in the Foot Note, against serial number 40, for "S.O. 923", read "S.O. 923 (E)"

[No. V. 26015/1/92-AE/ISM(Tech.)]

CHIRANJI LAL, Under Secy.

रसायन और उर्वरक मंत्रालय

(रसायन और पैट्रो-रसायन विभाग)

नई दिल्ली, 7 जुलाई, 1998

का.आ. 1412—केन्द्रीय सरकार राष्ट्रीय औषध शिक्षा और अनुसंधान संस्थान अधिनियम 1998 (1998 का अधिनियम संख्या 13) की धारा 1 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्द्वारा जुलाई, 1998 की 8 तारीख को वह तारीख नियत करती है जिस दिन उक्त अधिनियम लागू होगा ।

[स 1(11)/93-पी आई-4 (नाइपर)]

एस. के. सूद, संयुक्त सचिव

MINISTRY OF CHEMICALS AND FERTILIZERS

(Department of Chemicals & Petrochemicals)

New Delhi, the 7th July, 1998

S.O. 1412.—In exercise of the powers conferred by sub-section (2) of Section 1 of the National Institute of Pharmaceutical Education and Research Act, 1998 (Act No. 13 of 1998), the Central Government hereby appoints 8th day of July, 1998 as the date on which the said Act shall come into force.

[F. No. 1(11)/93-PI-IV(NIPER)]

S. K. SOOD, Jt. Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 7 जुलाई, 1998

शुद्धि पत्र

का.आ. 1413.— केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 6 की उपधारा (1) द्वारा प्रदत शकितयों का प्रयोग करते हुए, भारत सरकार के पेट्रोलियम और प्राकृतिक गेस मंत्रालय की अधिसूचना सं.का.आ. 901, तारीख 17 मार्च , 1997, तारीख 5 अप्रैल, 1997 भाग-2, खण्ड-3, उपखण्ड (ii) में प्रकाशित भारत केराजपत्र में निम्नलिखित संशोधन करती है, अर्थात :-

उक्त अधिसूचना से संलग्न अनुसूची में, गांव बगोदरा और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित प्रविष्टियां रखी जाएगी अर्थात :-

गांव का नाम	सर्वेक्षण सं./ खंड सं.	क्षेत्र		
		हेक्टर	आरे	सेन्टीआरे
(1)	(2)	(3)	(4)	(5)
बगोदरा	693	2	79	00
	726	0	71	40
	727	0	48	00
	722	0	23	50
	728/1	0	61	37
	721	0	03	68
	731	0	23	79
	720	0	20	25
	719	0	61	50
	738	0	78	60
	742/1	0	00	80
	741	0	41	10
	753	0	44	10
	755	0	18	90
	805	0	36	60
	802/1	0	64	80
	799	0	58	50
	854	0	03	00
	860	0	60	00
	866/1	0	70	65
	865	0	42	00
	864	0	35	05
	870	0	09	25
	923	0	23	50
	922/1	0	51	61
	922/2	0	01	59
	922/3	0	32	00
	913/1	0	75	00
	908	0	43	50
	905	0	46	50
	906	0	51	90
	31	0	72	00
	156/1	0	43	60
	156/3	0	23	20
	156/4	0	23	05
	156/6	0	00	65
	156/7	0	10	00
	93/21	0	34	25
	93/22	0	18	75
	93/16	0	31	40
	93/18	0	18	00
	93/7	0	04	30
	93/9	0	08	60
	93/14/4	0	13	50
	93/14/10	0	12	20
	123/1	0	35	10
	122	0	20	40
	120	0	52	50
	102/2	0	08	36
	101/1	0	45	00
	100	0	40	50
	98/2	0	33	60
	99/1	0	21	54

[फा. सं. आर-31015/19/96-ओआर. II]

के. सी. कटोच, अवर सचिव

Ministry of Petroleum and Natural Gas

New Delhi, the 7th July, 1998

CORRIGENDUM

S.O.1413.—In exercise of the powers conferred by sub-section (I) of section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas, No. S. O. 901, dated the 17th March, 1997, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 5th April, 1997, namely:-

In the Schedule to the said notification, for village Bagodara and the enteries relating thereto, the following entries shall be substituted, namely:-

Name of Village	Survey/Block Number	Area		
		Hectare	Are	Centare
(1)	(2)	(3)	(4)	(5)
" Bagodara	693	2	79	00
	726	0	71	40
	727	0	48	00
	722	0	23	50
	728/1	0	61	37
	721	0	03	68
	731	0	23	79
	720	0	20	25
	719	0	61	50
	738	0	78	60
	742/1	0	00	80
	741	0	41	10
	753	0	44	10
	755	0	18	90
	805	0	36	60
	802/1	0	64	80
	799	0	58	50
	854	0	03	00
	860	0	60	00
	866/1	0	70	65
	865	0	42	00
	864	0	35	05
	870	0	09	25
	923	0	23	50
	922/1	0	51	61
	922/2	0	01	59
	922/3	0	32	00
	913/1	0	75	00
	908	0	43	50
	905	0	46	50
	906	0	51	90
	31	0	72	00
	156/1	0	43	60
	156/3	0	23	20
	156/4	0	23	05
	156/6	0	00	65
	156/7	0	10	00
	93/21	0	34	25
	93/22	0	18	75
	93/16	0	31	40
	93/18	0	18	00
	93/7	0	04	30
	93/9	0	08	60
	93/14/4	0	13	50
	93/14/10	0	12	20
	123/1	0	35	10
	122	0	20	40
	120	0	52	50
	102/2	0	08	36
	101/1	0	45	00
	100	0	40	50
	98/2	0	33	60
	99/1	0	21	54 "

[File No. R-31015/19/96-OR.II]

K. C. Katoch,Under Secy.

खाद्य और उपभोक्ता मामले मंत्रालय

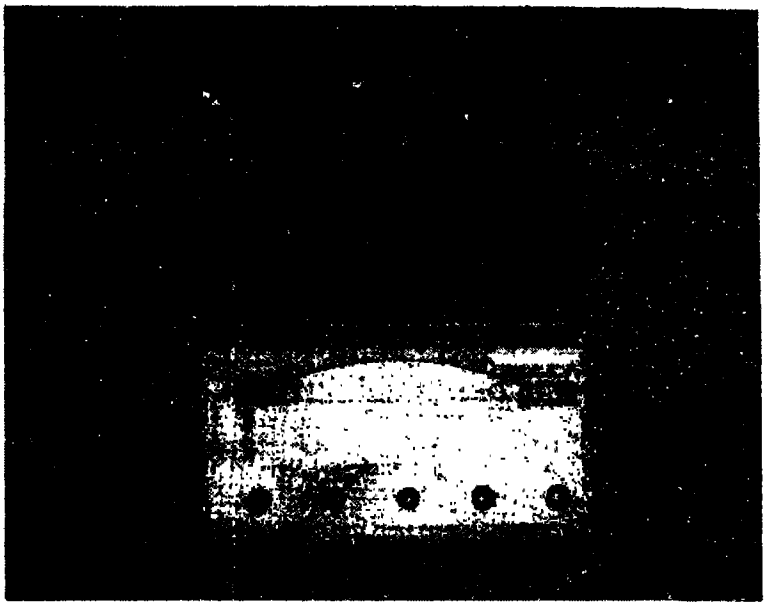
(उपभोक्ता मामले विभाग)

नई दिल्ली, 3 जुलाई, 1998

का. आ. 1414. — केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात्, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और संभावना यह है कि अविरत उपयोग की अवधि में भी उक्त माडल यथार्थता बनाए रखेगा और परिवर्तित दशाओं में उपयुक्त सेवा देता रहेगा;

अत: अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए स्वसूची अस्वचालित इलेक्ट्रानिक मेजटाप वर्ग II (उच्च) शुद्धता वाली "डी जे" श्रृंखला टाइप की तुलन मशीन के माडल का, जिसका ब्राण्ड नाम सैनसुई है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण मै. सैनसुई इलेक्ट्रानिक्स प्राइवेट लि. 89/1 भवानी पेठ, फासेटी पूल के निकट पुणे-411042 द्वारा किया गया है और जिसे अनुमोदन चिह्न आई.एन.डी./09/97/36 समनुदर्शित किया गया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है,

यह माडल (आकृति में दिया गया) उच्च शुद्धता (वर्ग 2 शुद्धता) वाली तुलन मशीन है जिसकी अधिकतम क्षमता 3 कि. ग्रा. है और न्यूनतम क्षमता 5 ग्राम है सत्यापन मान अन्तराल 100 मि. ग्रा. का है। इसमें टेयर युक्त है जिसमें 100 प्रतिशत व्यकलनात्मक धारित टेरे प्रभाव है। भारग्राही 140 × 170 मि.मी. की साइड वाला आयताकार अनुदत्त कारक है। लैंड संप्रदर्शन तुलन परिणाम उपदर्शित करता है। यंत्र 230 वोल्ट, 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति

इसके अतिरिक्त केन्द्रीय सरकार, उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषित करती है कि माडल के अनुमोदन प्रमाणपत्र के अन्तर्गत इसी विनिर्माता द्वारा इसी सिद्धान्त, डिजाइन के अनुरूप और वही सामग्री, जिससे अनुमोदित माडल का विनिर्माण किया गया है से विनिर्मित अधिकतम 150 ग्रा./10 मि.ग्रा., 300 ग्रा./10 मि.ग्रा., 1.5 कि. ग्रा./0.1 ग्रा., 6 कि. ग्रा./0.2 ग्रा., 6.2 कि. ग्रा./0.2 ग्रा. अधिकतम क्षमता और 3 कि. ग्रा./0.01 ग्रा. और 0.1 ग्रा., 300 ग्रा./0.001 ग्रा. और 0.01 ग्रा. मूल्य वाली दोहरी रेंज वाली मशीनें क्षमता वाले समरूप मेक, शुद्धता और निष्पादन वाले तुलन यंत्र भी है।

[फा. सं. डब्ल्यू. एम. 21(45)/96]

राजीव श्रीवास्तव, अपर सचिव

MINISTRY OF FOOD AND CONSUMER AFFAIRS

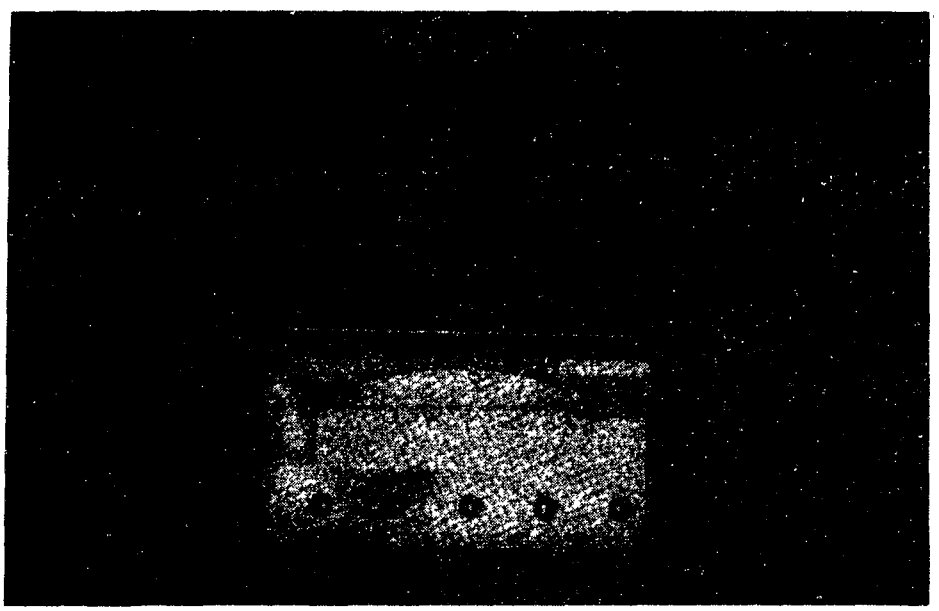
(Department of Consumer Affairs)

New Delhi, the 3rd July, 1998

S.O. 1414. — Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of the self-indicating non-automatic electronic table top weighing machine of type "DJ" series of class II (high) accuracy with brand name "SANSUI" (hereinafter referred to as the Model) manufactured by M/s Sansui Electronics Pvt. Ltd., 89/1, Bhavani Peth, Near Ghaseti Pool, Pune-411 042, and which is assigned the approval mark IND/09/97/36;

The Model (given in the figures) is a high accuracy (accuracy class II) weighing instrument with a maximum capacity of 3 kg. and minimum capacity of 5g. The verification scale interval (e) is 100mg. It has a tare device with a 100 per cent subtractive retained tare effect. The load receptor is of rectangular cross section of sides 140 × 170 millimetre. The LED display indicates the weighing result. The instrument operates on 230 volts, 50 Hertz alternate current power supply;



Figure

Further, in exercise of the powers conferred by sub-section (12) of the said section, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 150g/10mg, 300g/10mg, 1.5kg/0.1g, 6kg/0.2g, 6.2kg/0.2g; dual range machines with maximum capacity and 'e' value of 3kg/0.01g and 0.1g, 300g/0.001g and 0.01g manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[File No. WM 21(45)/96]

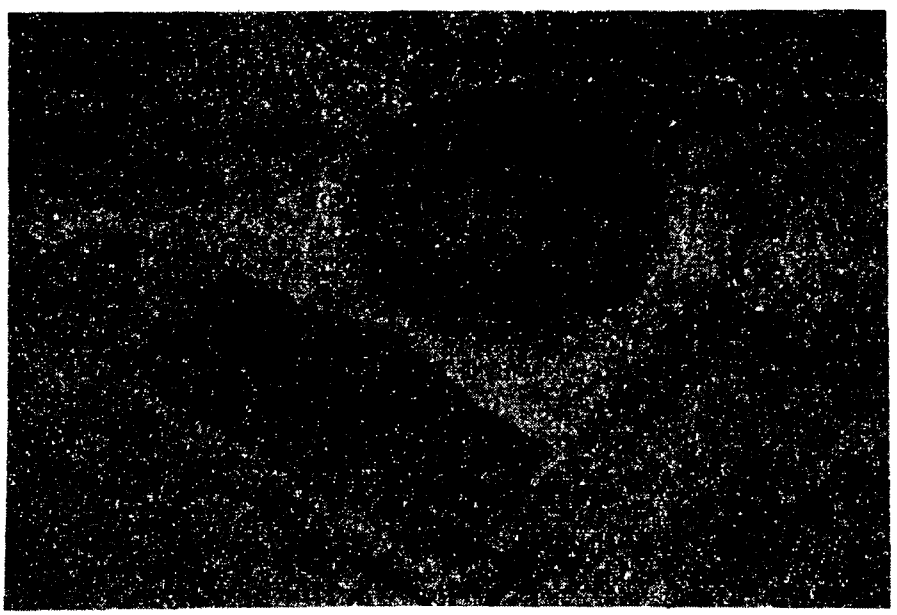
RAJIV SRIVASTAVA, Addl. Secy.

नई दिल्ली, 3 जुलाई, 1998

का. आ. 1415.— केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत की गई रिपोर्ट पर विचार करने के पश्चात्, समाधान हो गया है कि उक्त रिपोर्ट में वर्णित माडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) और बाट और माप मानक (माडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और संभावना यह है कि अवरित उपयोग की अवधि में भी उक्त माडल यथार्थता बनाए रखेगा और परिवर्तित दशाओं में उपयुक्त सेवा देता रहेगा;

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए स्वसूची अस्वचालित इलेक्ट्रानिक मेजटाप वर्ग II (उ. प्र.) शुद्धता वाली "डी जे" श्रृंखला टाइप की तुलन मशीन के माडल का, जिसका ब्राण्ड नाम सैनसुई है (जिसे इसमें इसके पश्चात् माडल कहा गया है) और जिसका विनिर्माण मै. सैनसुई इलेक्ट्रानिक्स प्राइवेट लि. 89/1 भवानी पेठ, फासेटी पूल के निकट पुणे-411042, द्वारा किया गया है और जिसे अनुमोदन चिह्न आई.एन.डी./09/97/37 समनुदर्शित किया गया है, अनुमोदन प्रमाणपत्र प्रकाशित करती है;

यह माडल (आकृति में दिया गया) उच्च शुद्धता (वर्ग 2 शुद्धता) वाली तुलन मशीन है जिसकी अधिकतम क्षमता 600 ग्रा. है और न्यूनतम क्षमता 200 मि. ग्रा. है। सत्यापन मान अन्तराल 10 मि. ग्रा. का है। इसमें टेरे युक्त है जिसमें 1.0 प्रतिशत व्यकलनात्मक आदित टेरे प्रभाव है। भारग्राही 140 मि.ली. की साइड वर्गाकार बाट का है। लैड संप्रदर्शन तुलन परिणाम, परिणाम उपदर्शित करता है। यंत्र, 230 वोल्ट, 50 हर्टज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।



आकृति

इसके अतिरिक्त केन्द्रीय सरकार, उक्त धारा की उपधारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषित करती है कि माडल के अनुमोदन प्रमाणपत्र के अन्तर्गत इसी विनिर्माता द्वारा इसी सिद्धान्त, डिजाइन के अनुरूप और वही सामग्री, जिससे अनुमोदित माडल का विनिर्माण किया गया है से विनिर्मित अधिकतम 620 ग्रा./0.001 ग्रा., या 0.01 ग्रा., 6.2 कि. ग्रा./0.01 ग्रा. या 0.1 ग्रा., 600 ग्रा./0.1 ग्रा. या 0.01 ग्रा., 6 कि. ग्रा./ 1 ग्रा. या 0.1 ग्रा., 300 ग्रा./0.001 ग्रा. या 0.01 ग्रा. और 3 कि. ग्रा./0.01 ग्रा. और 0.1 ग्रा. क्षमता वाले समरूप मेक, शुद्धता और निष्पादन वाले तुलन यंत्र भी है।

[फा. सं. डब्ल्यू. एम. 21(45)/96]

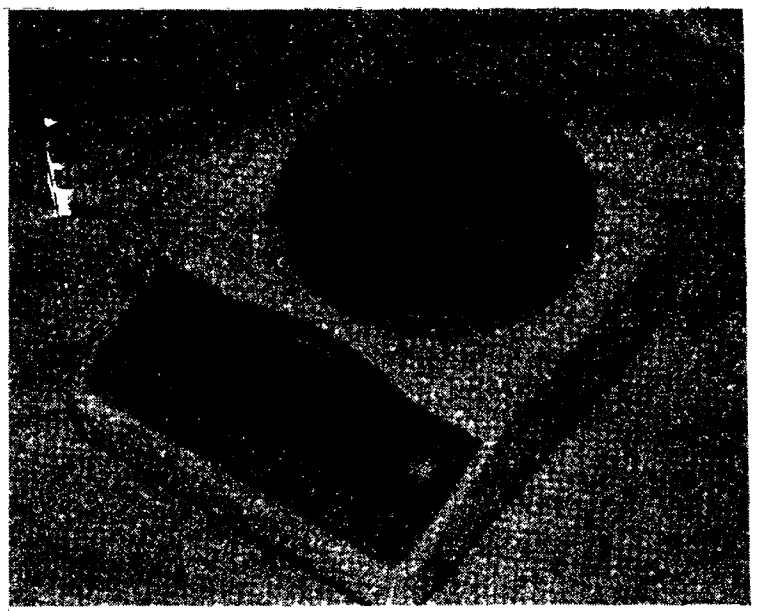
राजीव श्रीवास्तव, अपर सचिव

New Delhi, the 3rd July, 1998

S.O. 1415. — Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain accuracy over periods of sustained use and to render accurate service under varied conditions;

Now therefore, in exercise of the powers conferred by sub-section (7) of section 36 of the said Act, the Central Government hereby publishes the certificate of approval of the Model of the self-indicating non-automatic electronic table top weighing machine of type "DJ" series of class II (high) accuracy with brand name "SANSUI" (hereinafter referred to as the Model) manufactured by M/s. Sansui Electronics Pvt. Ltd., 89/1, Bhavani Peth, Near Ghaseti Pool, Pune-411 042, and which is assigned the approval mark IND/09/97/37;

The Model (given in the figures) is a high accuracy (accuracy class II) weighing instrument with a maximum capacity of 600 g. and minimum capacity of 200 mg. The verification scale interval (e) is 10 mg. It has a tare device with a 100 per cent subtractive retained tare effect. The load receptor is of square section of sides 140 millimetre. The LED display indicates the weighing result. The instrument operates on 230 volts, 50 Hertz alternate current power supply;



Figure

Further, in exercise of the powers conferred by sub-section (12) of the said section, the Central Government hereby declares that this certificate of approval of the Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity of 620 g/0.001g or 0.01g, 6.2 kg/0.01g or 0.1g, 600 g/0.1g or 0.01g, 6kg/1g or 0.1g, 300 g/0.001g or 0.01g, and 3kg/0.01g and 0.01g manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the approved Model has been manufactured.

[File No. WM 21(45)/96]

RAJIV SRIVASTAVA, Addl. Secy.

नई दिल्ली, 22 जून, 1998

का०आ० 1416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-6-98 को प्राप्त हुआ था ।

[सं० एल-12012/21/93-आई०आर०-बी०-II]
सनातन, डैस्क अधिकारी

New Delhi, the 22nd June, 1998

S.O. 1416.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Madras as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 19-6-1998.

[No. L-12012/21/93 IR(B-II)]
SANATAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU CHENNAI

Thursday, the 12th day of March 1998

PRESENT :

Thiru S. ASHOK KUMAR, M.Sc., B.L., INDUSTRIAL TRIBUNAL

Industrial Dispute No 48 of 1993
(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the workmen and the Management of Central Bank of India, Madras

BETWEEN

The workmen represented by :

The General Secretary,
Central Bank of India Emp. Union,
P.B. No. 1579/211, Second Line,
Beach · Madras-1.

AND

The General Manager,
Central Bank of India,
48/49, Montieth Road,
Madras.

REFERENCE :

Order No. L-12012/21/93-IR(B-II), Ministry of Labour, dated 14-5-93, Govt. of India, New Delhi.

This dispute is coming on for a final hearing on Wednesday, the 7th day of January, 1998 and upon perusing the reference, claim and counter statements and all other material papers on record and upon hearing the arguments of Tvl. Aiyar and Dolia and Thiru R. Arumugam, Advocates appearing for the petitioner and Thiru C. T. Selvam, Advocate appearing for the respondent-management and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

The Government of India by order dt. 14-5-1993 has referred the following dispute for adjudication :

"Whether the action of the management of Central Bank of India, in discharging Sri S. Sivaraj from the services of the bank with effect from 16-12-1985 is justified. If not, what relief the workman is entitled to ?"

2. The main averments found in the claim statement of the petitioner are as follows :

Thiru S. Sivaraj, was employed in the respondent's Panruti branch from 1980 onwards as subordinate staff. On 20-8-85 a charge sheet was issued to him alleging that he had forged the signature of the one Tmt. Arundati and withdrew Rs. 600 and that is highly indebted to outsiders. The respondent conducted an enquiry on 7-9-85 in which the worker admitted the charges. The management representative submitted their documents on 13-9-1985 behind the back of the said worker. The enquiry officer submitted his findings. The copy of the findings were not furnished to the worker. The respondent issued a memo dated 14-11-85 calling upon the worker to submit his explanation on the proposed punishment of discharge from service. The worker submitted his explanation. Then the respondent passed an order dated 16-12-85 confirming the proposed punishment. Then the worker filed an appeal to the Appellate Authority. The appellate authority by an order dated 11-3-1986 rejected his appeal. Thereafter the petitioner raised an Industrial Dispute, and after failure of conciliation, the non-employment issue has been referred to this Court. The reported withdrawal happened in the year 1984 and the charge sheet was issued in 1985. No complaint from the customer was received. No document was produced in the enquiry. The worker who belongs to poor scheduled caste family and an illiterate admitted the charge on the fond hope that the respondent would consider his case sympathetically. He had explained the circumstances to the respondent. The person from whose account, he had withdrawn the amount is known to him very well and he had given her money to be credited into that account. The incident in question happened in a situation and circumstances beyond his control and in a desparate and frustrated frame of mind and it was not at all a planned or motivated act. The entire enquiry was based on the member's own confession and no evidence was produced by the respondent to prove the charges. The worker cannot be deemed to be highly indebted for having borrowed Rs. 6,981. The punishment of termination inflicted on the worker is shockingly disproportionate to the gravity of misconduct. The petitioner is the only

breadwinner of his family which consists of large aged members and all are depending upon him. This Tribunal has got ample powers under Section 11A of the I.D. Act, to interfere and modify the punishment. The petitioner prays to pass an award holding that the action of the respondent in terminating services of the worker is not justified and to direct the respondent to reinstate him with continuity of service with back wages and with all attendant benefits.

3. The main averments in the counter statement of the respondent management are as follows :

The worker Thiru S. Sivaraj was employed in the respondent bank from 1980 onwards as subordinate staff. A charge sheet dated 20-8-1985 was issued to him stating that he was instrumental in operating the Account No. 3707 in the name of Tmt. Aruntha-thi and taking advantage of the closeness to the account holder he used to make remittance on behalf of the account holder and he withdrew Rs. 600 by forging her signature. Further he has confessed by his statement dated 31-5-1985 that he had outside borrowings amounting to Rs. 6,981 which necessitated him to do the act of forgery to meet his immediate requirements. In the enquiry held on 7-9-1985 the worker S. Sivaraj had admitted the charge before the Enquiry Officer in the presence of this representative Mr. C. H. Venkatachalam. Since the worker has admitted his guilt the question of furnishing him copy of the findings to him does not arise. The respondent issued a memo dated 14-11-1985 calling upon the worker to appear for a perseonal hearing before the Disciplinary Authority. Again the order of punishment the woker had filed an appeal and the Appellate Authority has considered the same and passed detailed order on 11-3-1986 rejecting the appeal and confirming the punishment imposed on the worker. The worker had also filed mercy petition before the Managing Director and the same has not been favourably considered by the management. The bank being financial institution where, the highest integrity and honesty are absolutely necessary for every employee, the conduct of the worker in forging the signature of the account holder and withdrawing the money for his benefits is highly reprehensible and it is not desirable to retain such an employee in a financial institution like bank. Due to his heavy outside borrowings the worker had committed this offence which does not warrant any sympathy. The respondent prays to dismiss the claim statement filed by the petitioner and to confirm the action of the management.

4. No witness was examined and no document was marked on behalf of the petitioner. On behalf of the respondent Ex. M.1 to M.6 have been marked by consent. On 17-6-1997, the learned counsel for the petitioner has made endorsement stating that there is no oral evidence and he is giving up the preliminary issue with regard to the domestic enquiry.

5. The point for our consideration is : Whether discharging the petitioner from the services of the respondent Central Bank of India is justified ?"

6. The Point : The workman Thiru S. Sivaraj was employed as a sub-staff in the respondent management from 1980 onwards. The charge against the worker is that on 14-5-1984 he forged the signature of Tmt. Aruntha-thi and withdrew Rs. 600 from her account and that he is indebted in excess of his known means. The worker was not given any opportunity to explain the charges framed against him. But even before the charge sheet dated 20-8-1985, the explanation has been obtained from the worker Sivaraj on 29-7-1985 as reply to the communication memo dated 14-6-1985 and 8-7-1985. It is also mentioned in the charge sheet itself that the worker has made a confession statement on 31-5-1985. The alleged confession statement dated 31-5-1985 of the employee is not available in the record. On the other hand there is a confession statement dated 7-9-1985 i.e. same day on which the enquiry was conducted against him. It is mentioned in the proceedings dated 13-9-1985 that the enquiry against the worker was held on 7-9-1985 itself when the charge sheeted employee admitted his guilt in respect of both the charges. It is seen in the records that on 13-9-1985 after conclusion of the alleged domestic enquiry, in the absence of the worker as well as his representative, the Presiding Officer of the respondent management has filed a statement and also eight documents. No opportunity has been given to the worker to cross-examine on this aspect. However the worker has given up his defence as regards the fairness of the domestic enquiry. The enquiry officer has given his findings based on the admission of the worker as well as the report of the Presenting Officer. The defence representative has given a statement dated 2-7-1985 before the disciplinary authority wherein he has mentioned as follows :

> "The employee has pleaded guilty, and the following submissions are respectfully made to the Enquiry Officer and Disciplinary authority for sympathetic consideration.
>
> The employee has realised the gravity of the guilt and also expressed regret vide his reply dt. 29-7-1985. He has been working in our bank for the past few years and has otherwise a clean record of service. He is a sincere, devoted and efficient worker and has always earned the appreciation of his superiors. The incident, in question is the only exception and it has happened in a circumstance beyond his normal frame of mind. It was not a planned or motivated act. In a desparate mood and domestic compulsion he has involved himself in this act without realising its consequences. He comes from a very poor family. He is married with two children. At the age of 30, and being the first son, he has the big responsibility of taking care of entire family with 10 persons including his aged parents and young brothers and sisters. He is the only bread earner and hence the entire family is dependant on him. Without his support the family will be in virtual starvation. It is submitted that considering his past unblemished service and his having realised the guilt and pleading guilty, a merciful and lenient view may be taken on him. He has been sufficiently advised and he has also assured that in future he will never cause

any action warranting any complaint against him and would discharge his duties honestly. Hence it is again urged that a lenient view may be taken and given an opportunity to mend himself."

But accepting the findings of the Enquiry Officer, respondent has discharged the worker from services and the worker's appeal as well as mercy petition have also been dismissed.

This is the only incident in which the petitioner is said to have forged the signature of one Smt. Arunthathi for withdrawing Rs. 600. From the records it could be seen that the worker has been deposited the money in the said Smt. Arunthathi's Account earlier. On 12-12-1983 he has borrowed Rs. 800 from the said Smt. Arunthathi and after getting her signature in the withdrawal slip with her consent, he has received a loan of Rs. 800 from her. On 14-5-84 the worker is said to have forged her signature and withdrew Rs. 600 from her account. It is seen from the statement dated 7-5-1985 that both the amounts Rs. 800 and Rs. 600 have been paid to the bank in her account. There is no loss to the bank or to the customer since the money has been remitted back by the worker. The worker has admitted that he has obtained loan of Rs. 3000 from Thiru Balaraman and from one cement company Rs. 3,581 and Rs. 400 from another shop. The indebtedness to the tune of Rs. 7000 could be managed and repaid by the bank employee. The worker is not involved in any other misconduct and there is no adverse remark and past record against him. The worker have admitted his guilt on the fond hope that the management will take a lenient view if he admitted the guilt but the management has taken it very seriously and awarded the maximum punishment.

In 1983 2 LLJ P. 263, 264, 265 the Division Bench of Hon'ble High Court of Gujarat between R. M. Parmar and Guajarat Electricity Board, has held as follows :

An employee facing a proceeding which could result in his economic death has a right to contest and result it. He is not bound to admit the charges, or to plead guilty in order to enable him to invoke the jurisdiction of the Court u/s. 11A to reduce the penalty. No such condition was engrafted by the Legislature and the Labour Court could not amend the statute by introducing such a rider. That he is ultimately found guilty at the departmental proceeding does not necessarily mean that he was in fact guilty. But even if he is in fact guilty of the charge levelled against him. he has the right in invoke the powers of the Labour Court u/s. 11A for reduction of the penalty. The provision itself postulates a finding of guilt warranting a punishment recorded after contest and empowers the Labour Court to reduce the punishment all the same. Since the power can be exercised even after he is found guilty at the conclusion of the inquiry, where is the compulsion to plead guilty ? To say that the power can be exercised only provided an employee pleads guilty and throws himself of the mercy of the Labour Court is to rewrite (in fact virtually to repeat) the provision. Claiming reduction of penalty is his right and not something for which the employee has to beg of the Labour Court on bended knees, and folded hands. Insisting on this as a pre-condition for exercise of power u/s. 11A, the Labour Court has abdicated its jurisdiction altogether and scuttled the purpose and policy of the regislature. Thus, there is no effective exercise of powers u/s. 11A. This is one reason for why the matter requires to be remanded for a fresh decision in accordance with law uninfluenced by the circumstances that he did not plead guilty S. 11A was brought on the Statute Book by S 3 of the Industrial Disputes (Amendment) Act, 1971. It was brought on the Statute book on account of the felt needs of the time as is evident from cls 2 and 3 of the Statement of Objects and Reasons (See Gazette of India—Extraordinary Part II S. 2 page 564) reading as under :

The International Labour Organisation, in its recommendation (No. 119) concerning 'termination of employment at the initiative of the employer' adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination, amongst others, to a neutral body such as an arbitrator, a court an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstance of the case may require. For this purpose, a new Section 11A is proposed to be inserted in the Industrial Disputes Act, 1947. The matter regarding imposition of penalty on employees (it was so realised by International Labour Organisation an international body) could not be left solely to the discretion of the management even if the employee concerned is found to be guilty of the charges levelled against him-presumably because of the conditioned approach of the disciplinary authority with his inbuilt and inherent pro-employer-anti-employee bias. That is why an obeidance to the felt needs of the time it was considered necessary to entrust this most vital function to a neutral body. With the end in view that the employees were not treated more harshly than they deserved in the context of facts and circum-

stances, of the case, and that the employee could get the protection of the Labour Court which could be trusted to make a just and fair approach, the provision was introduced by way of an amendment. It is a benevolent power conferred on the Labour Court and has to be exercised in the spirit in which the provision has been enacted in order to further the intendment and purpose of the legislation, keeping a glow before the mental eye some very important dimensions of the matter, viz.,

(1) There is widespread unemployment in our country and it is very difficult to secure a job to earn enough to keep body and soul together unlike in developed countries.

(2) The State does not provide social benefits like unemployment allowance to enable a discharged employee to sustain himself and his family to some extent, as is being done in the developed countries.

(3) In imposing punishment on an erring employee an enlightened approach informed with the demands of the situation and the philosophy and spirit of the time requires to be made. It cannot be a matter of the ipse dixit of the disciplinary authority depending on his whim or caprice.

(4) Be it administration of criminal law of the exercise of disciplinary jurisdiction in departmental proceedings, punishment is not cannot be the 'end' in itself.

Punishment for the sake of punishment cannot be the motto. Whilst deliberating upon the jurisprudential dimension the following factors must be considered—

(1) In a disciplinary proceeding for an alleged fault of an employee punishment is imposed not in order to seek retribution or to give vent to feeling of wrath.

(2) The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out a warning to the other employees to be careful in discharging of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.

(3) It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of them. It would be counter productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.

(4) In order to attract the charge arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.

(5) When different categories of penalties can be imposed in respect of the alleged fault one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned it would be absolutely unsafe to retain him in service the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardising the interest of the employer the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask his inner voice and rational faculty why a lesser penalty cannot be imposed.

(6) It cannot be overlooked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the Court and avail of the costly and time-consuming machinery to challenge in despiration the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.

(7) When the disciplinary proceedings end in favour of the employee the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops every one is left with a bitter taste in the mouth. All because extreme penalty of dismissal or removal is imposed instead of a light one.

(8) Every harsh order of removal from service creates bitterness and arouses a feeling of antagonism in the collective mind of the workers and gives rise to a feeling class conflict. It does more harm than good to the employer as also to the society.

(9) Taking of a petty article by a worker in a moment of weakness when he fields to a temptation does not call for an extreme penalty of dismissal from service. More particularly when he does not hold a sensitive post of trust (pilferage by a cashier or by store-keeper from the stores in his charge, for instance, may be viewed with seriousness). A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may, yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when

even the rich commit economic offences to get richer and do so by and large with impunity. (And even tax evasion or possession of black money is not considered to be dishonourable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passes under the honourable name of kleptomania when committed by the rich."

From the above it is clear that punishment meted out to an employee should not be disproportionate to the misconduct alleged. In this case the punishment of discharging from services is shockingly disproportionate. Learned counsel for the worker submitted that reinstatement of services without back wages but with continuity of service would be enough for the worker. The worker had been dismissed in the year 1985. For the last 13 years he is unemployed and has not received any salary. Loss of salary for 13 years would be more than sufficient punishment for the misconduct alleged against the worker. Therefore, I hold that the discharge of petitioner from the services of the respondent management is not justified and order reinstatement of the worker S. Sivaraj without back wages but with continuity of service and other attendant benefits. Award passed. No costs.

Dated, this the 12th day of March 1998.

THIRU S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For both side : Nil.

DOCUMENTS MARKED

For Petitioner-workman : Nil.

For Respondent-management :

Ex. M-1/20-8-85 : Charge sheet (copy).

Ex. M-2/28-9-85 : Enquiry Proceedings (copy).

Ex. M-3/14-11-85 : Show cause memo (copy).

Ex. M-4/16-12-85 : Disciplinary authority order (copy).

Ex. M-5/16-12-85 : Administrative Authority order (copy).

Ex. M-6/16-12-85 : Appellate authority order (copy).

नई दिल्ली, 23 जून, 1998

का०आ० 1417 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-6-98 को प्राप्त हुआ था ।

[सं० एल-17012/108/90-आई०आर० (बी०-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 23rd June, 1998

S.O. 1417.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 22-6-1998.

[No. L-17012/108/90-IR (B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI.

I. D. NO. 112/90.

In the matter of dispute :

BETWEEN :

Shri S. P. Arya, S/o. Late Shri Dalal Singh, r/o. 64/28, Arya Nagar, Meerut.

Versus

Senior Divisional Manager,
Life Insurance Corporation of India,
Divisional Office, Saket, Meerut.

APPEARANCES :

Shri J. B. Ravi : for the Workman.

Shri S. K. Taneja : for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17012/108/90-I.R. (B-II), dated 1-10-1990 read with order dated the 16-10-1990 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Life Insurance Corporation of India in imposing the penalty of removal from service, of Shri S. P. Arya, w.e.f. 11-8-1980 is legal and justified ? If not, to what relief the workman is entitled ?"

2. That the brief facts of the disputes are that the workman joined the services of the management/Corporation on 4th December, 1963, as an Office Assistant. The management/LIC of India hereinafter called as the Corporation, was created under the Life Insusance Corporation of India Act and is a statutory Corporation within the meaning of Article 12 of the Constitution of India. The service conditions of the workman in the Corporation are governed by statutory regulations known as Life Insurance Corporation of India (Staff) Regulation, 1960, framed under Section 49(2)(b)(bb) of the Life Insurance Corporation of India Act, 1956. The workman had been an active trade union worker and had been General Secretary of Meerut Division

of Insurance Employees Union and has also been its President. The case of the workman is that the management with a view to harass active trade union workers, issued charge-sheet and suspension orders against 7 Office bearers and the working committee members of the union during the period 27th November, 1978 to 2nd December, 1978. It is stated that as the management was already prejudice against the workman, the management with mala-fide intention issued orders transferring the applicant to Mhow in Madhya Pradesh. It is also stated that the applicant had indifferent health and was on casual leave from the second half of 27th November, 1978 to 2nd of December, 1978. Since the intensity of his sickness increased he took further leave on medical ground. The order of transfer was not sent to the workman at the address given by him. He learnt for the first time about the transfer from newspapers dated 15th December, 1978, when he was still bed ridden. The transfer order is stated to be had been issued on 27th November, 1978 by the Zonal Manager, LIC of India, Kanpur. The workman was relieved on 28th November, 1978, by Meerut Office without taking charge from the applicant. It is stated by the workman that he was sick and was not physically fit to join at the new place and he has been sending his medical certificate for grant of leave on medical grounds.

3. That the workman further pleaded that as a normal practice the employees in the Assistant grade|cadre are not transferred outside the jurisdiction of Divisional Office, except on individual request, mutual transfer or service exigencies. It is stated that the workman protested against the said transfer. It is further stated that as the management bent upon transferring the applicant outside Meerut Division, it issued an order dated 26th April, 1980, transferring the applicant to Panipat in Haryana. It is stated that the transfer to Panipat entails inter-zone transfers and zonal office is not competent to effect the same. It is also stated that the workman sat on hunger strike with effect from 23rd May, 1980, and when the applicant was on hunger strike on 31st May, 1980, he was arrested and was in police custody till 1st of July, 1980, and the management placed the workman under suspension, vide its order dated 12th June, 1980, for the period 31st May, 1980 to 12th June, 1980. It is further stated that when the workman was under police custody and seriously ill due to long hunger strike, a charge sheet-cum-show cause notice dated 21st June, 1980, was issued by the Zonal Manager, Central Zone Office of the Corporation, Kanpur. The workman has challenged the action of the management in terminating his services as bad in law on the following grounds :—

(a) While proposing the punishment of removal from service, vide charge-sheet-cum-show cause notice dated 21st June, 1980, the management has acted arbitrarily and in violation of principles of natural justice.

(b) That the order dated 11th August, 1980, is bad in law being contrary to Staff Regulation 39 framed under LIC of India Act. LIC was under obligation to give a reasonable opportunity to the employee to defend himself against such charge or charges by holding a proper departmental enquiry.

(c) That action of the management in transferring the workman concerned outside Meerut Division was not based upon exigencies of work but was because of his trade union activities and as such the same suffers from malice besides the same being an unfair labour practice.

(d) The charge-sheet-cum-show cause notice dated 21st June, 1980 is bad in law and the workman has been denied an opportunity of leading his evidence to prove that the action of the management is based upon ill will of some senior officers of the management against him.

(e) The order dated 11th August, 1980, is bad in law as the disciplinary authority failed to appreciate that the workman requested for supply of certain documents so that he could give effective reply to the charge-sheet-cum-show cause notice.

4. That the management contested the petition and submitted that the action was legal and justified and the punishment is not in any manner excessive or disproportionate. The Corporation raise preliminary objection to the effect that the cause of action for raising, the industrial dispute allegedly arose as early as in November, 1978, or in August, 1980, when the workman was transferred from Meerut and removed from services of the Corporation respectively. The action of the workman in raising the dispute after a period of 11 years is highly belated and reference does not deserve to be decided on merit on the ground of inordinate delay alone. On merits, the Corporation justified the impugned removal order dated 11th August, 1980, which was passed by the competent authority in the matter of charge sheet-cum-show cause notice dated 21st June, 1980. It will be worthwhile to reproduce the charges herein below :—

"(1) That vide order dated 27th November, 1978, you were transferred to Branch Office, Mhow under Indore Division and were relieved by the Divisional Manager, Meerut vide order dated 28-11-1978. You did not join at Branch Office, Mhow but kept on submitting application for leave on medical grounds from time to time to the Divisional Manager. Meerut, instead of Divisional Manager, Indore under whose jurisdiction you had been posted on transfer. Vide our letter reference Personnel/A dated 22-12-1978 and 5-2-1979 you were again directed to join duties at B.O. Mhow but you continued defying Office instructions and continued to submit applications for leave on medical grounds to the Divisional Manager, Meerut, who as stated above had already relieved you of your assignment at Meerut. Again vide our letter dated 21-8-1979 followed by another letter dated 8-2-1980, you were specifically intimated that you having been

relieved from Divisional Office Meerut vide order dated 28-11-1978 of the Divisional Manager Meerut ceased to be an employee of the Divisional Office, Meerut and as such, you should only correspond with regard to your leave or any other allied matter either with Divisional Manager, Indore or the Zonal Manager. In defiance of the aforesaid instructions given to you by the Zonal Manager, Kanpur, you continued to address letters alongwith the leave applications to Divisional Manager, Meerut, thus disobeying lawful orders. The instance of your having addressed letters to the Divisional Manager, Meerut, in clear violation of the aforesaid instructions are detailed in Annexure 'A' which shall form part of this charge-sheet-cum-show cause notice.

(2) That a panel of Medical Examiners headed by Dr. R. K. Aggarwal of Meerut was appointed by the Divisional Manager, Indore, for your medical examination and vide his letter dated 15-2-1980, you were directed to appear before the Medical Examiner at the place, date and time fixed by aforesaid Dr. R. K. Aggarwal. That vide our letter dated 11-3-1980 also you were directed to appear before the Board of Medical Examiners appointed by Divisional Manager, Indore for your medical examination with regard to your alleged ailments. That Dr. R. K. Aggarwal fixed 17-3-1980 for your medical examination and sent you an intimation to this effect advising you time and place of medical examination but you did not appear before him vide your letter dated 23-3-1980 you inter-alia, informed us that since the intimation for your medical examination was received from Dr. R. K. Aggarwal on 19-3-1980 after the date fixed by him had expired, you could not appear for the medical examination. In the same letter you also challenged the authority of the Divisional Manager, Indore to constitute such Board for your medical examination which clearly mounted to in subordination and breach of discipline on your part. Again Dr. R. K. Aggarwal fixed 11-4-1980 for your medical examination and informed you the date, time and place of medical examination by telegram and letter dated 31-3-1980 but instead of appearing before the Medical Board you vide your letter dated 10-4-1980 advised Dr. R. K. Aggarwal inter-alia to the effect that the panel has not been constituted legally and that you have already challenged the formation of the panel, and that in the circumstances, you did not consider it advisable to go further in the matter and thus you again not only violated lawful orders of the competent authority but also were guilty of insubordination and breach of discipline.

(3) That upon considering the representation received by us, it was decided to accommodate you in the nearby Division and you were accordingly transferred to Branch Office, Panipat by order of 26-4-1980 in partial modification of the earlier order dated 27-11-1978 but you did not join at Branch Office, Panipat. You were directed to join at Branch Office, Panipat, alternatively to get in touch with Dr. R. K. Aggarwal for your medical examination. You neither reported for duty at Branch Office, Panipat, nor got in touch with Dr. R. K. Aggarwal for medical examination. This is again an act of gross insubordination and indiscipline.

(4) That vide our letter dated 24-5-1980 you were directed to submit your explanation for defiance of office instructions and lawful orders issued to you from time to time. You were also directed to report for duty at Branch Office, Panipat within 7 days from the date of receipt of that above letter or get in touch with Dr. R. K. Aggarwal within 3 days from the date of receipt of the above letter for fixing up a date for the medical examination but neither you reported for duty at Branch Office, Panipat nor approached Dr. R. K. Aggarwal for your medical examination, thus, deliberately disobeying the lawful orders of the competent authority.

(5) That you were given ample opportunity to join at the transferee offices or appear before the Board of Medical Examiners to prove that you are continuously ailing with effect from 3-12-1978 but you will fully continued to defy office instructions on both the counts."

It is stated by the Corporation that the charges against the workman were basically of disobedience of transfer order and other instructions issued to the workman in relation to the transfer order.

5. That the workman appeared himself and filed documents on record in support of his allegations. The respondent/management produced 6 witnesses MW-1 to MW-6 and filed documents in support of the everments made in the reply.

6. I have heard the authorised representatives of the parties at length and have gone through the entire record minutely and after perusal of the grounds taken by the workman, it is revealed that he has challenged the action of the Corporation in transferring him from Meerut to Mhow and then to Panipat on ground of malice and on ground of his being a trade union leader. He has further challenged the action of the Corporation in passing removal order mainly on ground that he was not given due opportunity. In order to adjudicate the reference made by the Government the following two important issues assume relevance :—

(1) Whether the transfer order dated 27-11-1978 (Ex. MW3/2) issued by the Zonal Manager, Kanpur, transferring the services of the workman from Divisional Office, Meerut, to Mhow under Indore Division, was justified or a mala fide one.

(2) Whether in passing the removal order dated 11-8-1980 (Ex. MW3|26) the prescribed procedure was followed and whether reasonable opportunity was given to the workman for his defence.

7. Taking up the issue of transfer first, it is found that the LIC of India was constituted under the Act of Parliament, viz. LIC of India Act, 1956. Section 23(2) of the aforesaid Act reads as under :

"Staff of Corporation—23(2) : Every person employed by the Corporation or whose services have been transferred to the Corporation under this Act shall be liable to serve anywhere in India."

8. Apart from above, the Corporation has framed Regulations defining the terms and conditions of service of Staff of LIC of India, in exercise of powers vested in it under clauses (b) and (bb) of sub-section (2) of Section 49 of LIC Act, 1956, with the previous approval of Central Government. These regulations are known as LIC of India (Staff) Regulations, 1960. By virtue of the amendment in 1981, the aforesaid Regulations par take the character of rules framed by the Central Govt. under Section 48 of the LIC Act. The Regulation 80 of the aforesaid (Staff) Regulations, 1960, reads as under :—

"TRANSFERS :

80. The competent authority may transfer an employee from one department to another in the same office or from one office of the Corporation to another office."

The appointment letter issued to the workman by LIC of India contains a clause which reads as under :

Clause 7 : "You are liable to be transferred anywhere in India where the Corporation has its office."

9. It may also be submitted that alongwnth the workman other employees of the Meerut Division were also transferred. A list of employees who were transferred at the same time, is exhibit MW1|2. All these employees joined at their respective place of transfer except the complainant|workman, who avoided transfer order on various pretexts. In his statement of claim he has pleaded following reasons for not obeying the transfer order:—

(1) That the transfer order dated 27th November, 1978, transferring him from Meerut to Mhow was issued to victimise him for his trade union activities.

(2) That he did not receive the transfer order and was not relieved from Meerut.

(3) That he was ill which prevented him from obeying the said transfer order.

10. So far as the plea of workman for victimisation is concerned the competent authority in its order dated 11th August, 1980 (Ex. MW3|26) has mentioned that the transfer was made for administrative consideration. The witnesses produced on behalf of the Corporation, have also deposed that the transfer was made by the competent authority for valid administrative consideraiton and this has not been controverted in cross-examination of management witnesses or by any other record. The provisions of LIC Act, 1956, LIC of India (Staff) Regulations, 1960 and the condition in appointment letter quoted above clearly establishes that the competent authority had right to transfer the services of any employee. It has also been brought on record that the complaint workman was not the only employee who was transferred from Meerut. From the material brought on record supported by evidence it is very well established that the competent authority acted well within his rights to transfer the workman from Meerut to Mhow and the workman in terms of contract of employment was liable to obey the said transfer order. It may be recalled that the Zonal Manager passed transfer order on 27th November, 1978 and the workman did not obey the same till he was removed from service in August, 1980, although on the request made on his behalf the competent authority agreed to accommodate him at Panipat a place nearby Meerut (Exhibit M-13). On the contrary the workman has not brought on record any documentary or oral evidence to support his contention that the transfer was malacious or made to victimise for his trade union activities. The workman, thus, by not obeying the transfer order displayed highest form of indiscipline which alone is sufficient to justify his removal from services in terms of Regulation 39(1)(f) of the LIC of India (Staff) Regulations 1960.

11. Now regarding the other two pleas of the workman that he did not receive that transfer order and that he was not relieved from Meerut and that during the whole period he was ill and was submitting the applications for leave supported by medical certificates it has come on record that the workman, somehow, gained the knowledge about his transfer to Mhow, on the same day, i.e. on 27th November, 1978, and left office by submitting leave application for half day. The leave was further extended upto 2nd December, 1978. The workman thus, deliberately avoided service of transfer order. The Divisional Manager, Meerut, consequent upon transfer of workman from Meerut issued office order dated 28th November, 1978, relieving the workman from his assignment at Meerut (Ex. MW3|3). The workman in order to avoid service of transfer order dated 27th November, 1978 and relieving order dated 28th November, 1978 had gone in leave though from the statement of Management witness, Shri B. C. Sharma, it would be seen that during this period the workman was visiting office, addressing meetings etc.

12. Report from the testimony of the Corporation witness, the Corporation has filed a letter dated 4th December, 1978, from Divisional Manager Meerut addressed to the Executive Director (P), C.O. Bombay (Ex. MW3|6) from which it will be seen that on 28th November, 1978, the workman did not join duty but was present in the office premises and at 1.30 PM organised a demonstration. On 29th November, 1978, pressures and threats were put on the Divisional Manager, Meerut, through some external agencies to recall the order of transfer of the workman. At 4 PM on the same day, the workman alongwith one Advocate Shri S. D. Sharma met the

Divisional Manager, Meerut and pressed for withdrawal of transfer order. When the Divisional Manager did not agree he was threatened with dire consequences including physical injury to him personally and to the members of his family. On the same day at about 7 p.m. Shri A. K. Shukla, the then Branch Manager (C & S) was sought to be manhandled near his house, but the situation was averted by timely arrival of police mobile van. The above facts clearly establish that the workman was knowing about his transfer but was not joining duty to avoid service of transfer order and relieving order though he was visiting office for other purposes. In this context my attention was drawn to the provisions of Regulation 85 of the LIC of India (Staff) Regulations, 1960, which is reproduced hereunder :

> "85. Employee to furnish address : Every employee shall intimate his full residential address to the office in which he is working and any change in the address previously furnished. All communications sent to the last address so intimated to the office shall be deemed to have been properly sent to him."

13. The aforesaid (Staff) Regulations in explanation to Regulation 39 further provides:

> Explanation 2 : All communications under this regulation and copies of orders passed thereunder may be delivered personally to the employee if he is attending office; otherwise they shall be sent by registered post to the address noted in the service record. Where such communications or copies of orders cannot be served on him personally or by registered post, copies thereof shall be affixed on the notice board of the office in which the employee is employed, and on affixing such communications and orders shall be deemed to have been properly served on him.

14. Since the workman was avoiding service of transfer and relieving orders the Divisional Manager, Meerut by invoking the above provision of Staff Regulations sent the said two orders to the workman at his residential address by registered post which was returned by postal authorities with the remark "Avoided to take". Copies of the aforesaid two orders were also displayed on the notice board of the Divisional Office on 2nd December, 1978, in accordance with the procedure prescribed in the aforesaid Staff Regulations, 1960. The Divisional Manager, Meerut, further, published the information about the transfer of the workman in the daily newspaper. From the above facts, it is clear that the transfer order and relieving order were duly served on the workman and in his statement of claims the workman also acknowledged information of his transfer at least when the same was published in the newspaper (Ex. MW3/7 & MW3/8).

15. So far as relieveing from Divisional Office, Meerut is concerned, as stated above, the DM, Meerut had already passed the order dated 28-11-1978 (Ex. MW3/3) by which the workman was relieved from his assignment at Meerut. No other formality was required and the order of Divisional Manager, Meerut was sufficient to relieve the workman from Meerut. And after order of relieve he was deemed to be an employee of Mhow Branch under Indore Division.

16. The workman did not resume duty even after 29-11-1978 and continued submitting of applications for leave on medical grounds. This was not because he was ill but for malafide reasons not to obey the transfer order. The workman despite the fact that he was transferred and relieved from Meerut, did not join at new place of posting and kept submitting applications for leave to the Divisional Office, Meerut. The Divisional Manager, Meerut vide his letters dated 30-12-1978 and 25-1-1979 (Ex. MW3/9 and MW3/10) directed the workman on his being relieved from Meerut he ceased to be an employee of Meerut Divisional Office and as such he should address all his leave applications to Divisional Manager, Indore where his services have been transferred. The workman in defiance of the aforesaid direction of Divisional Manager, Meerut continued addressing him leave applications. Finally, the Zonal Manager, Kanpur vide registered A.D. letter dated 22-12-1978 directed the workman to join duty at Branch Office, Mhow before 30-12-1978. In the same letter he also made it clear that if he failed to join as directed he would expose himself to disciplinary action. The letter was received by the workman on 28-12-1978. The workman even defied the order of the Zonal Manager and neither joined at Mhow nor left the practice of addressing leave applications to Divisional Office, Meerut. The Zonal Manager, finally vide another registered A.D. letter dated 5-2-1979 (Ex. MW3/11) directed the workman to join duty at Branch Office Mhow. This letter was also received by the workman on 9-12-79 but he continued defying the order and did not report for duty to join Branch Office, Mhow. The Zonal Manager again issued a letter on 21-8-79 (Ex MW3/12) to the workman directing him to join duty at Mhow (Exhibit No. M-8). This letter was received by the workman and vide his letter dated 22-9-1979, the workman tried to justify his misconduct by raising unterable pleas.

17. Since the workman was all along pleading illness, the Divisional Manager, Indore constituted a panel of medical examiners headed by by Dr. R. K. Aggarwal of Medical College, Meerut for examining the workman. The Divisional Manager, Indore vide letter dated 15-2-1980 (Ex. MW3/13) directed the workman to appear before the panel of Medical Examiners at the time, place and date fixed by Dr. R. K. Aggarwal. The Zonal Manager, Kanpur also vide letter dated 11-3-1980 (Ex. MW3/14) directed the workman to appear before the panel of Medical Examiners, Dr. R. K. Aggarwal fixed 17-3-1980 for Medical examination at Meerut and informed the date, time and place to the workman. The workman vide his letter dated 23-3-1980 informed that he received the information on 19-3-1980 and as such he could not appear before the panel of doctors. Dr. R. K. Aggarwal again fixed 11-4-1980 as the date for medical examination and informed the same to the workman vide telegram and letter both dated 31-3-80 (Ex. MW3/20). This intimations duly received by

the workman but he challenged the Constitution of panel and refused to appear before the panel on various untenable pleas which were baseless and frivolous. In this context, the conduct of the workman in not appearing before the panel of medical examiners leads to a strong presumption that he was not ill and was trying to seek medical leave by producing the board, it would have been established beyond doubt that the medical certificates submitted by the workman were false and bogus and he was intentionally avoiding to join in Mhow. Even before this Tribunal where he had last opportunity, the workman did not produce any of his treating physician during the aforesaid period to establish that he was ill. The aforesaid facts proved by evidence on record clearly establish that the workman was not ill and in order to avoid transfer he was submitting false medical certificates.

18. On the request made on behalf of the workman, the Zonal Manager, Kanpur vide its order (Ex. MW3|21) dated 26-4-1980 modified the transfer order of the workman from Mhow to Panipat, a place nearer to Meerut. This further proves that there was no malafide or malice. The workman did not obeyed even the modified order of the Zonal Manager and finally the Zonal Manager vide his letter dated 24-5-80 (Ex. MW3|23) directed the workman to report to Panipat within 7 days from the receipt of this letter or alternatively to get in touch with Dr. R. K. Aggarwal for medical examination if he still pleads to be sick the workman did not pay any attention to the direction of the Zonal Manager and neither reported for duty at Panipat nor did he appear before Dr. R. K. Aggarwal. The workman followed neither of the alternatives and thus defied the lawful instructions. He resorted to Dharna and hunger strike he submitted a fitness certificate on 21-5-90 and thus it was incumbent upon the workman to join duties. Instead he defied the orders.

19. From the above facts placed on the record it is clearly established that the transfer orders were passed by the Competent Authority in bonafide exercise of the powers conferred on him for the smooth functioning of the Office. From Nov., 1978 till August, 1980 there was sufficient time for the workman to comply with orders. The Competent Authority even accommodated the workman at a place nearby Meerut by modifying earlier transfer order and also gave him full opportunity to establish that he is unable to join duty at place of transfer on account of his illness. The workman, however, did not show any sign to cooperate with the Competent Authority and kept on defying the transfer order and various other directives issued to him by the Divisional Manager, Meerut, Divisional Manager, Indore and Zonal Manager, Kanpur. The contentions of workman, therefore, that the transfer order was malicious and was made to victimise him for his trade union activities is not established on record.

20. Now I come to the actual reference which has been referred by the Central Govt. for adjudication by this Hon'ble Tribunal. The Order dated 11 8 80 was passed by the Zonal Manager in the matter of Charge Sheet-cum-Show Cause Notice dated 21-6-80. The workman has challenged the aforesaid removal order dated 1-8-1980 on ground that he was not given reasonable opportunity for defence and that as per procedure prescribed in the LIC (Staff) Regulations, 1960 he was not given opportunity by way of oral enquiry. The relevant provisions of Regulation 39 of LIC of India (Staff) Regulations, 1960 which are deemed to be rule made by the Central Govt. are reproduced hereunder for information:—

39(2) "No order imposing on an employee any of the penalties specified in clauses (b) to (g) of the sub-regulation (I) supra, shall be passed by the disciplinary authority specified in Schedule I without the charge on charges being communicated to him in writing and without his having been given a reasonable opportunity of defending himself against such charge or charges and of showing cause against the action proposed to be taken against him."

39(3) "The disciplinary authority empowered to impose any of the penalties, specified in clause (b), (c), (d), (e), (f) or (g) may itself enquire into such of the charges as are not admitted or if it considers it necessary to do so appoint a board of enquiry or an enquiry officer for the purpose."

39(4)(ii) "where the authority concerned is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure. Prescribed in these regulations. . . . .Pass such order as it may deem necessary."

21. From the above provisions it would be seen that in normal case the employee is required to be issued a charge sheet in writing. It is also necessary to hold enquiry on such charges which have not been admitted by the employee. The Regulation further envisages that before imposing penalty, the employee should be given one more opportunity of showing cause against the action proposed to be taken against him. This procedure is followed in the normal course but in exceptional circumstances laid down in Regulation 39(4), the disciplinary authority may consider the circumstances of the case and pass such orders thereon, as it deems fit. One of the special circumstances mentioned in Regulation 39(4) is that where the disciplinary authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the Regulation he may pass such orders as it may deem fit.

22. The workman was continuously defying the orders issued by the Competent Authority from 27-11-1978 i.e. from the date of his transfer order. In the present case, the workman did not join duty at Mhow when he was transferred nor desisted from addressing letters to Divisional Manager, Meerut and the Zonal Manager, Kanpur. The Zonal Manager on the representation made on behalf of the workman even changed his place of transfer and posted him at Panipat, a place nearby Meerut but the workman did not comply or showed any positive inclination to comply with the said transfer order as well. I find

that the second modified transfer order for his transfer to Panipat was made at the request of the representative of the workman and as such the Competent Authority was expecting the workman to comply with the order. However, the workman did not comply with the said order. Though during the period after 27-11-1978, the workman was often visiting Divisional Office, Meerut organising the meetings and demonstrations but in writing he was all along pleading that he was not keeping good health and that he should be accommodated in Meerut itself. The workman even brought the outside influence for modification of his transfer order which are (Exhibit No. M-31 & M-32). From the activities of the workman, though the management was convinced that the workman was not ill but was avoiding transfer order, still to give him further opportunity of proving his illness, the management appointed a panel of medical examiners. It was informed to the workman that if he still pleads to be sick he should appear before the panel of doctors or otherwise he may join duty at Panipat.

23. The workman does not deny the receipt of such letters and these letters have been placed before this Tribunal as (Exhibit No. M-16). The workman even did not accede to this fair and alternate offer of the management and still continued defying transfer order and the directives of the Zonal Manager not to address letters to Divisional Manager, Meerut.

24. From the chain of the circumstances and events as supported by evidence discussed above, it is very apparent that since 27-11-1978 upto the date of his removal from service, the workman did not obey any order issued by the Divisional Manager, Meerut, Divisional Manager, Indore or the Zonal Manager, Kanpur. From such an employee who was not prepared to co-operate with the management on any score it could not have been expected that he would co-operate if the oral enquiry was instituted against him. Moreover, the charge-sheet-cum-show cause notice dated 21-6-80 issued to the workman mainly contains the charges of dis-obedience of instructions given to the workman in writing by the aforesaid authorities, the workman does not deny the receipt of instructions and the fact that he disobeyed the orders. In these circumstances the Competent Authority rightly came to the conclusion that the oral enquiry in the facts and circumstances of the case was not practicable. The Competent Authority viz., the Zonal Manager, Kanpur by invoking the provisions of Regulation 39(4) (ii) passed the order dated 21-6-1980 recording the reasons on account of which he was satisfied that it is not reasonably practicable to follow the procedure laid down in Regulation 39. The Zonal Manager, therefore, decided that a charge-sheet-cum-show cause notice incorporating the charges of disobedience be issued to the workman proposing the penalty of removal from service under Regulation 39(1)(f) of LIC of India (Staff) Regulations, 1960. Keeping in view the gravity of charges i.e. deliberate defiance of orders for a continuous period of about 2 years the disciplinary authority proposed the penalty of removal of the workman from services of the Corporation under Regulation 39(1)(f) of the LIC of India (Staff) Regulations, 1960. In the aforesaid show cause notice the workman was given 10 days time to submit reply as to why the penalty proposed should not be imposed upon him. The workman though admitted receip. of charge-sheet-cum-show cause notice dated 21-6-1980, did not submit reply on merit of the case.

From the above account it will be seen that the opportunity of personal hearing envisaged under Regulation 39(2) & (3) was not given to the workman by Competent Authority mainly because the employee was continuously defying and deliberately defying lawful instructions given to him by the various authorities of the Corporation. Moreover, the disciplinary authority was further satisfied that the charges in the charge-sheet-cum-show cause notice dated 21-6-1980 are based on the letters exchanged between the management and the workman of which is acknowledged by the workman. Considering the above points the disciplinary authority i e Zonal Manager recorded the reasons in detail expressing his subjective satisfaction that in the circumstances of the case it would be impracticable to hold an oral enquiry. A copy of the note dtd. 21-6-1980 containing the reasons recorded by the then Zonal Manager, Kanpur is (Exhibit No. M-35). Thus, the charge-sheet-cum-show cause notice to the workman was issued by Competent Authority in exercise of the powers vested in him under Regulation 39(4)(ii) of LIC of India (Staff) Regulations 1960. The allegations of the workman that the charge-sheet-cum-show cause notice violates the provisions of Regulation 39 are baseless and untenable.

Thus, all the contentions of the workman in his statement of claim or in the rejoinder so far as the dispensing with the enquiry are concerned are baseless and untenable.

25. The next point raised by the workman to attack the order dated 11-8-1980 of the Zonal Manager is that he was not given reasonable opportunity to defend the charges.

The order dated 11-8-1980 passed by the Zonal Manager, Kanpur is a speaking order and contains in detail the various opportunities provided to the workman. The order dated 11-8-1980 of Zonal Manager, Kanpur has been filed and is (Ex. MW3|26). However, to recapitulate the entire issue it may be mentioned that in the charge-sheet-cum-show cause notice dated 21-6-1980 (Ex. MW9|25) the workman was given 10 days time to show reasons against imposition of penalty proposed in the said charge-sheet-cum-show-cause natice doted 21-6-1980. The workman did not submit any reply and kept waiting till 9-7-80. On 9-7-1980 he sent a telegram requesting the Zonal Manager for time upto 14-7-1980. The Zonal Manager granted time to the workman to submit reply upto 21-7-1980 (Exihbit No. M-18) the workman did not submit reply even during the extended time and again when the period was to expire vide letter dated 17-7-1980 requested the Zonal Manager to allow him time upto 14-8-1980. Though the Zonal Manager had already

given one extension to submit reply and there was nothing in letter dated 17-7-1980 of the workman which could have promoted the disciplinary authority to grant further time, but even then to give final opportunity to the workman the Zonal Manager vide his telegram dt. 19-7-1980 extended time for submitting reply upto 26-7-80. In this letter (Ex. No. M.19) it was made clear to the workman that if during this period no reply is received the matter shall be proceeded Ex-parte against him. This was further confirmed by the telegrams dated 22-7-1980 and 24-7-1980 sent to the workman. The workman, however, did not avail the benefit of this second extended time and did not file any reply. He however vide letter dated 23-7-1980 which he for reasons known to him sent by Regd. A|D received on 28-7-1980 while asking for further time upto 16-8-80 for the first time he made a request for supply of following 3 documents:

1. Establishment Manual.
2. Central Office circulars regarding transfer.
3. Report of Dr. R. K. Aggarwal.

27. It would be pertinent to point out that if these documents were necessary for the workman in defending the charges against him, he should have made demand of the same at the earliest available opportunity. But as submitted herein before in all his earlier letters though he was seeking time he never made any request for supply of documents. The fact that he demanded certain documents at the very belated stage itself indicates that the workman was interested in prolonging the issue. This apart, neither the Establishment Manual nor the Central Office Cir. Ref: 35955|ASP-79 dtd. 15-5-1979 was referred in the charge-sheet-cum-show cause notice and as such these documents were not necessary at all for the purpose of defence. So far as report of Dr. R. K. Aggarwal is concerned, the workman had not appeared before Dr. R. K. Aggarwal which he himself has admitted in his pleadings as well as in his deposition before this Tribunal. The demand for the report of Dr. Aggarwal was therefore, frivolous and a tactics applied by the workman for prolonging the issue.

28. In the letter dated 23-7-1980 of the workman referred to herein before received on 28-7-1980 after the expiry of time granted he also mentioned that his matter is being considered at the highest level. The aforesaid contention of the workman itself shows that he was not interested in defending the charges contained in the charge-sheet-cum-show cause notice dated 21-6-80 but wanted time to bring outside influence for change of his transfer order to Meerut. It may also be mentioned that even before this Tribunal, the delinquent employee has not produced any material to show that he was interested in defending the case and that he was seeking adjournment on account of his unproved illness. Contrary to the above, in his deposition before this Tribunal, the workman has admitted that during this period, he participated in a meeting at Suraj Kund which goes to show that he was not ill and by making unnecessary demand for documents was trying to prolong the proceedings. Having given 2 successive extensons of time when no cogent reply was received from the workman, the Zonal Manager, Kanpur vide final order dated 11-8-80 removed the workman from the services of Corporation under Regulation 39(1)(f) of LIC of India (Staff) Regulations, 1960. The order was received by the workman and he has not denied its receipt in his statement of claim.

29. Against the order dated 11-8-1980 of the Zonal Manager, the workman preferred an appeal to the Managing Director on 10-10-1980 (Ext. No. M-22). The Managing Director after considering the relevant records passed a speaking order dated 29-6-81 (Ex. MW3|29) upholding the order of Zonal Manager Kanpur dated 11-8-1980 against the order dated 29-6-1981 of Managing Director the workman further preferred memorial to the Chairman dated 8-7-1981 (Ext. Marked 'A'). The relevant extract from the aforesaid letter is reproduced below: —

> "In the event of your taking a merciful view and considering my fervent request for reinstatement in the service of the Corporation at Meerut sympathetically, I hereby solemnly undertake to completely eschew violence of any sort and intimidatory tactics even as part of my association with trade union activities or otherwise. I further undertake to do honest day's work in the remaining years of my service in this organisation. In case of any misconduct in future, you may, sir take a serious view as necessary and deal with my case in an appropriate manner in order to maintain discipline in the Office."

30. Again letter dated 23-9-1981 (Exhibit marked 'B') the workman wrote as under:—

> "I tender my apology for the incident whatsoever be and apologise for the charges levelled against me and I assure you to maintain that discipline in the office and do honest day's work."

31. The aforesaid letters of the workman, addressed to the Chairman amount to admission of charges by the workman and the workman is estopped from denying that the charges were false and frivolous. In view of this, all the allegations of the workman made in his statement of claim and rejoinder to the effect that the charges were false and frivolous, that he was not given reasonable opportunity for defence are baseless and misconceived. The workman in fact displayed the higest form of indiscipline and the penalty of removal imposed by Zonal Manager is commensurate with the quantum of guilt committed by the workman.

32. On the basis of evidence on record oral as well as documentary and the evidence as established in the cross-examination, it is reiterated that none of the grounds taken by the workman in his claim petition has been established. On the contrary it has been fully established that the order dated 11-8-1980 passed

by the Zonal Manager, Kanpur removing the workman from the services of the Corporation under Regulation 39(1)(f) of LIC of India (Staff) Regulations, 1960 with effect from 11-8-1980 is perfectly legal and justified and the workman is not entitled to any relief.

After the conclusion of the arguments a copy of the judgment dated 10th March, 1997, passed by Shri Badam Singh, Civil Judge. Junior Division, Hawali, Meerut, relating to a Civil Suit instituted by the workman claiming payment of Rs. 21,984 on account of the salary for the leave period for which the workman is claiming to be ailing was filed by Corporation. The Civil Court come to a finding that the workman has failed to prove that he was ailing between 28th November, 1978 till termination of his services. I am not pleading any reliance on the said judgment as I am told that the workman has filed appeal. However, from the evidence on record of this case, it is established that none of the grounds taken by the workman in his claim petition has been established. I, therefore, hold that act of the management was justified and legal and the workman was not entitled to any relief and reference is answered accordingly. Parties are however left to bear their own costs.

18th June, 98.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 24 जून, 1998

का०आ० 1418 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-98 को प्राप्त हुआ था ।

[सं० एल-17012/101/90-आई०आर० (बी०-II]

सनातन, डैस्क अधिकारी

New Delhi, the 24th June, 1998

S O 1418.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of LIC of India and their workman, which was received by the Central Government on 23-6-98,

[No. L-17012/101/90-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 99/90

In the matter of dispute between :

Shri S. M. Nayyar,
Through General Secretary,
Indian National Insurance Employees Congress,
C-3A/72-B, Janakpuri, New Delhi-58.

Versus

Senior Divisional Manager,
Life Insurance Corporation of India,
Jeewan Prakash,
25, K. G. Marg, New Delhi.

APPEARANCES :

Shri S. M. Nayyar in person.

Shri V. P. Mittal A. O. for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17012/101/90-I.R. (B-II) dated 7-9-90 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Life Insurance Corporation, New Delhi in reverting Shri S. M. Nayyar from the post of HGA to the post of Sec-Head w.e.f. 24-8-82 is justified ? If not, to what relief the workman is entitled ?"

2. In the statement of claim the workman has alleged that the management of the LIC issued Notification on 26-8-81 calling for application from the employees of the Delhi Division of the Corporation for selection of Programmers Grade II in the cadre of Higher Grade Assistants (to be referred hereinafter as HGA) and set out other conditions as explained in the said circular. Functional allowance of Rs. 75 PM was payable to the Programmer Grade II only as long as he continued to work as Programmer and the same was to stand withdrawn automatically after he was transferred from the said post. Shri S. M. Nayyar member of the Petitioner Union who was working as Section Head in Branch Unit 129 of the Corporation at that time applied for the said post of Programmer Gr. II in the HGA Cadre and competed with the other employees and was finally selected and prompted w.e.f. 1-1-82. On completion of probationary period of six months under the option available under condition No. 8 of the Notification dated 26-8-81 he requested for his transfer for Programmers Job. He was, however, confirmed as H.G.A. w.e.f. 24-7-82 vide letter dated 21-8-82. The Senior Divisional Manager, Delhi reverted the workman Shri S. M. Nayyar as Section Head is illegal and arbitrary manner. Shri Nayyar complied with the said order on 24-8-82 and instantly lodged his protest in writing vide letter dated 24-8-82. He appealed to the authorities later on and finally to the Ministry of Finance but from all stages his claim was rejected. He has prayed that the order of the Corporation recruiting him were illegal and arbitrary and violative of terms and conditions. He was entitled to be restored to the cadre of HGA w.e.f. 24-8-82 and entitled to all wages i.e. difference between H.G.A. and Section Head to which he was recruited.

3. The Management in its written statement on the other hand alleged that the action of the management was fully justified and no discrimination whatsoever in this case was done. The workman had submitted a representation dated 28-6-82 for showing his inability that he was not in a position to do full justice to the job to which he was promoted and also prayed that he be relieved from the Programmer Job. The reversion order was passed though after his confirmation dated 24-7-82 but at the request of the workman himself, the action of the management was in no way illegal or unjustified. Various other legal objections have also been taken by the management in its written statement.

4. The Management examined Shri Birbal Chopra, MW1 and the workman himself appeared as WW1.

5. I have heard representatives for the parties and have gone through the record carefully.

6. Representative for the workman in his written arguments has reiterated what has alleged in the statement of claim. He has also alleged that once he was confirmed by the H.G.A. he was entitled to the grade of the same if he was recruited as Section Head and the Functional Allowances of Rs. 75 was payable to him. He has further urged that the workman on 24th of August, 1982 had on taking over as Section Head submitted to the authorities regarding the wrongful act of the management contained in the order of reversion dated 21-8-82.

7. Management representative on the other hand has urged that the workman himself had requested for his reversion and he was to be reverted back to his original post from where he was promoted. In his request dated 28-6-82 he has specificate stated that due to domestic circumstances he was not in a position to do full justice to the job. He had reiterated this fact again in letter dated 26-7-82. The management has accepted to the request of the workman and reverted to him to the post of Section Head from where he was promoted to the post of H.G.A. The functional allowance was payable to the Programmer and not to the Section Head. Such allowance goes with the post and not with the person.

8. After going through the points urged before me by the representative for the parties and the record of the case, I am of the opinion that the two letters dated 27-6-83 and 26-7-83 were very important and relevant in this case. I reproduce both the letters which run as follows :—

"The Sr. Divl. Manager,
LIC of India,
Delhi Division,
New Delhi.

Dear Sir,

Re : My promotion as Programmer Gr. II.

This is further to your letter ref. Pers/Programmer, dated 1-1-1982 and my acceptance thereto w.e.f. 1-1-82 by virtue of which I was placed on probation as Programmer Grade II.

In this connection, I have to submit that having involved myself in the new job I have come to the conclusion that it encroaches extensively on my domestic time. I am also aware that once I am posted to a Branch it will make further in roads. However, the exigencies do not permit me to concentrate on the new assignment to the extent it demands. I feel that, under the circumstances, I shall not be able to do full justice to the job. Rather than proving to the institution, aliability, at a later stage, it will be in the fitness of things if I am relieved of the programmer's job.

While I have every hope that your goodself shall accede to my request, I sincerely regret for the inconvenience caused.

Yours faithfully,
Sd./-
(S. M. Nayyar),
Programmer (Grade II),
S. R. No. 110341,
Mech. Deptt., D. O. Delhi.

Dt. 28-6-82.

The other letter dated 26-7-82 runs as follows :—

"The Sr. Divisional Manager.
Life Insurance Corporation of India,
Divisional Officer,
New Delhi.

THROUGH PROPER CHANNEL

Sir,

Re : My promotion as Programmer Gr. II.

I invite your kind attention to my earlier letter dated the 28th June, 1982 on the above subject :

In view of the circumstances already explained in my letter referred to above and also to A.D.M. (Machines) in person I, at the cost of repetition, have to submit that I am not in a position to concentrate on the new job to the extent it requires.

I, therefore, request you to expedite the decision of my relieving from Programmer's job.

Regretting once again for the inconvenience caused.

Yours faithfully,
(S. M. Nayyar),
Programmer Gr. II,
S. R. No. 110341,
Divisional Office,
New Delhi."

Dated : 26-7-82.

9. A perusal of both these letters clearly show that the workman found himself not in a position to concentrate to the new job to the extent it required He had requested for being relieved from the Programmers job. He never asked for any transfer into any equivalent post carrying such allowance. The Management while accepting his request for being relieved of the said post passed the following order dated 21-8-82 :

"LIFE INSURANCE CORPORATION OF INDIA

Division Office,
Jeevan Prakash,
25, Kasturba Gandhi Marg,
Post Box No. 102,
New Delhi-110001.

No. Personnel/A(110341). Date : 21-8-1982

The competent authority has acceded to the request for reversion and approved the transfer of Shri S. M. Nayyar.

Shri S. M. Nayyar is hereby reverted from H.G.A. (Progr.) and transferred as a Section Head, Unit No. 320 with immediate effect.

He is, therefore, required to report for duty to the Sr. Branch Manager, Unit No. 320, New Delhi on 23-8-1982 at 10 A.M. after being relieved by the ADM, Machine Deptt.

He should also note that his reversion as Section Head and transfer has been agreed to subject to management's right to transfer him to any other office of the Corporation. If the office exigencies so demand.

Sd./- Sr. D.M.

Shri S. M. Nayyar,
S.R No. 110841,
Machine Department,
Delhi D.O."

An employee according to the rules cannot claim that he would work on a particular post of his choice or convenience and it was the prerogative of the management to entrust him with the work which related to the post to which he has been promoted/appointed. The workman in this case had opted for this promotion and was promoted as such but after working for sometime he found himself unfit and unable due to his domestic circumstances to do justice with the job. If he honestly felt that he was not in a position to do justice and perform his duties effeciently he should have been prepared to forego the functional allowance. His main demand in this case is that the functional allowance of Rs. 75 PM should be continuously paid to him though he was not in a position to work as Programmer. He wanted that he be given this functional allowance and be designated as Programmer Administration everything cannot go by the choice of the workman/employee and the management was fully competent to pass the order in question as the same was done at the request of the workman himself. The fact that this order made him eligible to the functional allowance of 75 p.m. and he had suffered loss was not important because it was done at his request on his inability to perform the functions he was entrusted with. In view of this situation without going into the technical aspect of the objections taken by the management, I am of the opinion that there is sufficient reasoning to hold that the action of the management reverting Shri S. M. Nayyar from the post of H.G.A. to the post of Section Head was justified, and he was not entitled to any relief. Parties are left to bear their own costs.

17th June, 1998.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 24 जून, 1998

का०आ० 1419 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरिएण्टल फायर एण्ड जनरल इंश्यूरेन्स क० के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-98 को प्राप्त हुआ था ।

[सं० एल-17012/42/87-आई०आर० (बी०-2)]

सनातन, डैस्क अधिकारी

New Delhi, the 24th June, 1998

S.O. 1419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Goernment hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Oriental Fire and General Insurance Co. and their workman, which was received by the Central Government on 23-6-1998.

[No. L-17012/42/87-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 56/88

In the matter of dispute between :

Shri Ashok Kumar Verma,
S/o Shri Desraj Verma,
r/o WZ-28/1, Plot No. 34,
Vishnu Garden, New Delhi,
and also r/o A-2/143, Paschim Vihar,
New Delhi-63.

Versus

The General Manager,
Oriental Fire and General Insurance Co.,
A/25/27 Asaf Ali Road, New Delhi-110002.

APPEARANCES :

Shri A. K. Verma in person.

Shri Pradeep Gaur, Advocate for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17012/42/87-D-IV (A), dated 3-5-1988 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the General Manager, Oriental Fire and General Insurance Co. Ltd., New Delhi, in not allowing Shri Ashok Kumar Verma, Assistant (C) to join duties on 3-9-1986 at the company's Janpath, New Delhi Office is legal and justified ? If not, to what relief the workman entitled ?"

2. The workman in his statement of claim alleged that he joined the company as Assistant w.e.f. 28-10-92 and was confirmed on the post after satisfactory completion of service w.e.f. 1-4-1973. He performed his duties upto 3-9-86 on which date he was not allowed to join his duties. He had remained absent for some period due to sickness of his brother and his own sickness and his termination of service was not justified.

3. Management filed written statement in which they took various legal objections.

4. However, during the pendency of the dispute the workman, unfortunately expired and his legal heirs were brought on record.

5. At the time of final disposal of the disuute the management presented a chart which has been marked as Mark 'X' in which the amounts payable to the deceased as his legal dues have been given in details. Since the workman has expired so he could not be entitled to any relief of reinstatement or any other relief claimed by him in his statement of claim. His legal representatives appearing on his behalf stated that whatever was legally due to be payable accroding to the record of the management be paid to them. According to the statement filed by the management net dues payable amounts to Rs. 53.625.24 p. It has been recorded in this statement furnished by the management that the deceased had nominated his father Des Raj Verma for Provident Fund and Gratuity but his father had also expired. The amount according to the rules of the Company was payable to the legal heirs of the deceased on production of succession certificate. In view of this situation all dues as shown in this statement by the management be paid to the legal heirs of the deceased according to the rules of the management on production of necessary succession certificate. Parties are, however, left to bear their own costs of this disptue.

Dated : 16th June, 1998

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 24 जून, 1998

का०आ० 1420 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू इंडिया इंश्यूरेन्स कं० लि० के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-98 को प्राप्त हुआ था ।

[सं० एल-17012/7/94-आई०आर० (बी०-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 24th June, 1998

S.O. 1420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of New India Insurance Co. Ltd. and their workman, which was received by the Central Government on 23-6-1998.

[No. L-17012/7/94-IR (B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 82/94

In the matter of dispute :

BETWEEN

Shri Vijay Gupta and Smt. Krishna Gupta
Represented by Maha Sachiv,
General Insurance Employees, Federation,
C-30, Community Centre, Naraina,
New Delhi-110029.

Versus

General Manager,

New India Insurance Company Ltd.,
Zonal Office Gulab Bhawan,
6, Bahadur Shah Zafar Marg,
New Delhi-110002.

APPEARANCES :

Representatives for Parties.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-17012/7/94-I.R. (B-II) dated 26-7-94 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the demand of General Insurance Employees Federation, New Delhi on the management of New India Assurance Co. Ltd., New Delhi for grant of special leave to Shri Vijay Gupta and Smt. Krishna Gupta from 12-12-1992 due to imposition of curfew in Lucknow is justified ? If so, what relief are the said workmen entitled to ?"

2. The applicant-workman in his statement of claim have alleged that they had applied for out station leave on personal ground for visiting Lucknow from 7-12-92 to 11-12-92 which was duly sanctioned by the competent authority and they proceeded on leave. Curfew was imposed on 6-12-92 and continued till 18-12-92. The leave rules stipulate that employee could be granted special leave if the curfew was either at the place of the residence of the employee or at the place of his posting. Since the workmen were in the area where curfew was imposed it was not possible for them to come out of curfew and report for duty after the expiry of their leave. They made request to the management for grant of special leave which was not allowed. It has been claimed that the period they remained in the curfew bound area be treated as special leave according to the rules.

3. The Management in its reply admitted the sanction of the leave for 5 days to the workman but alleged that the workman can be granted special leave only if there is curfew in the area where they are living or in the Office where they are working. None of the two conditions were applicable in this case and, therefore, they were not entitled to any special leave.

3. Management examined Shri S. P. Mittal MW-1 in support of its case.

4. I have heard representatives for the parties and have gone through the record.

5. The only point to be decided in this case was as to whether the employee who has gone on sanctioned leave and his residing in a area where curfew is imposed and the employee is unable to leave his place of residence, could he be granted special leave or not. It is admitted fact of the management that an employee if willing and fit to attend the office is unable to attend the office by imposition of curfew by order of any legal authority from his residence or in the area where his office is situated is entitled to special leave. The point to be decided was as to whether the applicants were on leave and staying at Lucknow could claim the benefit of imposition of curfew in that area and could avail the special leave for not attending the office.In normal course a residence would always mean where a person is normally residing while discharging his duties in the due course. Dehradun where their office was located was place of their normal residence. The provisions of grant of such special leave has been made to such employees who are though fit and willing to attend to their duties but were prohibited from performing that duty due to any reason beyond their control. In this case though the workmen were held up at Lucknow and Lucknow was not their normal place of residence but they were unable to attend to the duties simply because of the curfew imposed by law enforcing machinery and it was beyond their power to leave the place of residence to attend to their duties. they were prevented from attending to the dutkies by the law-enforcing agency and as such could be allowed to avail special leave provided under the rules governing their service conditions. I am, therefore, in view of my discussion above, of the opinion that the workmen could not attend to their duties due to imposition of curfew at their then place of residence and as such were entitled to special leave provided under the rules. The action of the management in refusing such leave to them was not justified and they be, therefore, treated as on special leave for the period from 12-12-92 to 18-12-92 and be paid their salary if not paid by treating that period as special leave. Parties are, however, left to bear their own costs.

Dated : 15th June, 1998

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 24 जून, 1998

का०आ० 1421.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक आफ इंडिया के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-98 को प्राप्त हुआ था ।

[सं० एल-12012/305/96-आई०आर० (बी०-II)]

सनातन, डेस्क अधिकारी

New Delhi, the 24th June, 1998

S.O. 1421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 23-6-1998.

[No. L-12012/305/96-IR (B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 114/97

In the matter of dispute .

BETWEEN

Shri Rajesh Kumar Sahni, Clerk,
G-2/46, Sector-15, Rohni,
Delhi-110085.

Versus

The Regional Manager,
Central Bank of India,
Regional Office,
I.M.A. House, I.P. Marg,
New Delhi-110002.

APPEARANCES :

None—for the workman.
Mrs. S. Janani—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/305/96-IR (B-II) dated 11/12-8-97 has referred the followig industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Central Bank of India in terminating the services of Shri Rajesh Kumar Sahni, Clerk by deeming him voluntarily retired w.e.f. 15-3-96 is fair just and legal If not, what relief the workman i s entitled to ?"

2. The workman appeared in person in this case after being sent notices many times on 6-4-98. His mother appeared on 16-4-98. He and his mother were told to file statement of claim and final opportunity was given for this purpose. No body appeared on 30-4-98 nor statement of claim was filed. It appears that the workman is not interested in proceeding further with the dispute. No dispute award is, therefore, given in this case leaving the parties to bear their own costs.

Dated : 12-6-1998

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 24 जून, 1998

का०आ० 1422.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रिजर्व बैंक ऑफ इंडिया, नई दिल्ली के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-98 को प्राप्त हुआ था ।

[सं० एल-12011/8/89-आई०आर० (बी०-I)]
सनातन, डैस्क अधिकारी

New Delhi, the 24th June, 1998

S.O. 1422.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Reserve Bank of India, New Delhi and their workman, which was received by the Central Government on 23-6-1998.

[No. L-12011/8/89-IR (B-I)]
SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 65/89

In the matter of dispute :

BETWEEN

Shri R. L. Malhotra and 29 others,
Through the Secretary,
Reserve Bank Employees' Union,
C/o Reserve Bank I, Building, New Delhi.

Versus

The General Manager,
Reserve Bank of India,
Parliament Street,
New Delhi.

APPEARANCES :

Shri P. T. S. Murthy—for the workman.

Shri P. K. Mathur—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12011/8/89-I.R. Bank I dated 19-7-89 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Reserve Bank of India, New Delhi in introducing the scheme for combined seniority list and switch over from non-clerical to clerical cadre vide circular dated 13-5-1972 and deprived the equal benefit of promotion and non-promotional compensatory allowance to switch over employee i.e. Shri R. L. Malhotra and 29 others in general cadre in comparison to their counterparts in cash Department was justified ? If not to what relief the workmen are entitled to ?"

2. The brief facts of this claim statement are that the workmen were employed in the R.B.I. as Coin-Note-Examiners prior to the introduction of Combined Seniority Scheme by the Respondent bank in 1972. They were graduates and were eligible for switch over to the Clerical Cadre after exercising a simple form of option. It was given to understand by the recognised union/management that the combined seniority scheme had been formulated so as to open *equal opportunities in Promotion for all categories of staff*, anticipating equitable distribution of Promotional opportunities switched over their cadre through an option.

3. Since these workmen who switched over to the General side as Clerks, were stagnating as Clerks in the General side whereas their counter-parts left behind in the cash department were enjoining better promotional opportunities and enhanced emoluments due to their better placement and grant of non-promotion compensation allowance. The workmen had opted for switch over in utmost good faith in the fond hope of sharing equal opportunities of promotion. The workmen approached the management that they be also given right to withdraw their option and be placed in the same position. Only those who had not opted have been placed now. The Management did not permit them on the ground hat option exercised by them was final and they could not be allowed to withdraw the same. Those workmen now have claimed that they be granted non-promotional compensation allowance and the consequential benefits such as arrears of pay and allowances to which their counter parts were enjoying in the interest of natural justice and they have also praved that appropriate promotion avenues in the General Side for these marginal pre-1972 employees who are few in number thereby removing the heart burning of these employees in the interest of a contended labour force. In the alternative they have praved that they be given original seniority together with all accrued benefits.

4. The management in its written statement besides taking many preliminary objections alleged that the scheme which was introduced by the management was upheld by the Hon'ble Supreme Court and alleged that by introducing the scheme the bank has neither deprived concerned 30 workmen equal benefit of promotion nor promotional compensatory allowance in comparison to their counter parts in the cash department as at the time of interview in the scheme in 1972 the promotional avenue in the cash department were formulated as compared to the promotional avenues in the clerical cadre. Prior to 1972 the bank used to maintain separate seniority list for clerical employees departmentwise at each Centre and promotions to higher grades of such employees took place on the basis of departmental seniority. This created unequal chances of promotion for employees in different departments. Therefore a combined seniority list for all clerical employees at one Centre irrespective of the departments was introduced to equalise the chances of promotion at that centre. The scheme was introduced by the bank w.e.f. 7-5-72. The salient features of the Scheme are—

"(i) The Scheme is voluntary and options for switch-over by employees in non-clerical cadre can be revoked any time before their actual transfer to clerical cadre.

(ii) This Scheme introduced in May, 1972 was applicable to non-clerical employees in the Bank's service as on 7th May, 1972.

(iii) A non-clerical employee has to forfeit two third of his non-clerical service while switching over to clerical cadre and his seniority in the clerical cadre is fixed accordingly. (This was to ensure a just balance between the interest of clerical and non-clerical employees).

(iv) On switchover the seniority of a switches is fixed in the Combined Seniority List and the cases to have any seniority position in his pre-switchover cadre and becomes integral part of the clerical cadre having no relation whatsoever with pre switchover non-clerical cadre in the Cash Department.

(v) Even assuming that there has been some imbalances in promotional avenues in the clerical cadre as well as in the non-clerical cadre, the same was non-comparable as the two cadres are entirely different. Grievance of the concerned 30 workmen is that they do not have avenues for promotion, but the facts are contrary as some of the concerned workmen have not availed of the avenues of promotion when it came to them i.e. either they did not appear in the qualifying test for promotion to the Staff Officer Grade 'A' or refused promotion even after qualifying the test. Thus, they cannot have the grievance that there are no promotional avenues for them and their allegation is fictitious and frivolous. Apart from the above, Bank has introduced an All India Merit Test since the panel year 1984-85. A Class III employee with 9 years of service was eligible to appear in the Merit Test but, the period of 9 years has since been reduced to five years from the panel year 1987-88. Therefore, the concerned workmen are having promotional avenues to become Staff Officer Grade 'A' in the Bank by appearing in the Merit Test. The concerned workmen are not availing of the available promotional avenues by taking the merit test. This makes ample clear that the grievances of the concerned workmen are frivolous, fictitious, misleading and misplaced having no merits.

(vi) As regards non-payment of non-promotional compensatory allowance to the concerned employees in comparison to their counter parts in the Cash Department, it may be seen that the non-promotional compensation of Rs. 80 per month was granted to such of the pre-1972 employees in the Cash Department who reach the and of the grade. The benefit to start from one year after reaching the end of grade and to last for not more than 3 years. This was introduced with effect from 6th December, 1981. Further, it was held, vide para 37.37 of the Dighe Award that an employee will not be entitled to this benefit if he switches over to other Department under different schemes. Thus, it has already been decided by the Dighe Tribunal that among others the concerned employees are not entitled to non-promotional compensatory allowance (emphasis added)

(vii) Promotion is exclusively a Management function and the same cannot be claimed by an employee as a matter of right. A dispute regarding promotion can be adjudicated by a Tribunal only when there is same malice or mala fide on behalf of the Management either in giving promotion to a particular person or in giving effect to the policy of promotion indiscriminately. All the concerned employees have been given switch-over and their seniority has been fixed under the Scheme strictly as per the provisions of the Scheme and the promotions in the Bank, both in clerical as well as in non-clerical cadre are being affected without any malice/mala fide discrimination on behalf of the Bank."

5. It has been finally urged in the written statement that the claim made by the employees has no merit and the same was liable to be dismissed.

6. The Management in support of its case examined Shri S. L. Ravi Personnel Officer MW-1 and Shri R. L. Malhotra WW-1.

7. The Management also placed on record the scheme as well as other relevant documents.

8. I have heard representatives for the parties and have gone through the record.

9. The decision of the Hon'ble Supreme Court reported in R.B.I. Vs. N. C. Paliwal and others AIR 1976 S.C. 2345 has been brought to my notice by the representative of the Management. The Ld. representative for the workman Shri P. T. S. Moorty has also seen the said judgment. The first part of the reference was fully covered by this decision of the Hon'ble Supreme Court and both the parties do not object to the same. The action of the Management of the R.B.I. New Delhi in introducing the Scheme for combined seniority list and switched over from non-clerical to clerical vide circular dated 13-5-72 has been held to be valid by the Hon'ble Supreme Court. This Tribunal cannot go beyond this and both his representatives for the parties have admitted this position before this Tribunal. This disposes of the first part of the reference as the Hon'ble Supreme Court has finally settled this matter. The second part of this reference relates to the non-promotional compensatory allowance to the switch over employees also stands covered by the Dighe Award published in the Gazette, Government of India II Section III Sub-section 2 dated 16-1-82.

10. In Dighe Award in para 37.37 it was held an employee will not be entitled to this benefit if he switches over other department under different schemes. It has thus already been decided by the Dighe Tribunal that many others concerned employees are not entitled to non-promotional compensatory allowance Shri P. T. S. Moorthy has also not controverted this decision regarding the second part of this reference. The Ministry of Labour though has made this reference to this Tribunal when both parts of the reference already stand settled by the judgment of the Hon'ble Supreme Court and by the Dighe Award. In view of this situation the workmen were not entitled to any specific relief from this Tribunal. However, both the representatives for the parties at the time of arguments have agreed that since the number of the workmen who have claimed in this reference some relief were really hard hit persons though according to rules they were not entitled to any relief from this Tribunal but it is expected of the Institution like R.B.I. to consider their individual cases of hardship in a sympathetic manner because they were very few in number and were almost at the fag end of their service career. With these remarks this reference is answered accordingly. Parties are, left to bear their own costs.

Dated : 10th June, 1998

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 24 जून, 1998

का०आ० 1423.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू इंडिया इन्श्यूरेन्स कं० लि० के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-98 को प्राप्त हुआ था ।

[सं० एल-12012/2/94-आई०आर० (बी० II)]

सनातन, डेस्क अधिकारी

New Delhi, the 24th June, 1998

S.O. 1423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of New India Insurance Co. Ltd., and their workman, which was received by the Central Government on 23-6-98

[No. L-12012/2/94-IR (B II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 81/94

Shri Shanti Sagar Jain,
Through Maha Sachiv,
General Insurance Employees Federation,
North Zone, C-30, Community Centre,
Naraina, New Delhi-110028.

Versus

General Manager,
New India Insurance Company Ltd.,
6, Bahadurshah Zafar Marg,
New Delhi-110002.

APPEARANCES :

Shri O. P. Rajouria—for the workman,
Shri Neeraj Singh on behalf of Sh. J. K. Bhola—for the Management.

AWARD

The Central Govt. in the Ministry of Labour vide its Order No. L-12012/02/94 I.R. B-2, dated 2/5-8-1994 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of New India Assurance Co. Ltd., New Delhi in not taking into account the functional allowance while fixing the pay of Shri S. S. Jain on his promotion as Sr. Asstt. w.e.f. 11-6-1992 is justified ? If not, what relief is the said workman entitled to ?"

2. Shri S. S. Jain, workman in this case has alleged in his statement of claim that he worked as cashier for a period of more than two months and was entitled to be treated as regular cashier as he has worked for a period exceeding 15 days during the said period. He had prayed for promotion to the higher scale cadre and was selected. The instructions containing the terms and conditions of rationalisation scheme by General Insurance Corporation vide its para 9.7 stipulates 60 per cent of the allowance to be merged with the emoluments of the employee on promotion to the higher cadre which, however, stood amended to 90 per cent on the subsequent directive issued by the Management. The workman has claimed that he was promoted to a higher cadre and his functional allowance be also merged with his salary in the higher cadre.

3. The Management in its written statement alleged that present proceedings were not maintainable and the reference was without application of mind. The workman was guilty of concealment of correct facts. The correct facts were that during April, 92 he was working as an Assistant while one Jaya Jain was working as Collective Cashier with the Management. She went on maternity leave w.e.f. 21st April, 92 as a result of which the work of the Cashier was temporarily looked after by some other employees. The workman was given the temporary work of Smt. Jaya Jain and he was given functional allowance for performing the work of the cashier. He neither acquired any lien over the post nor over the functional allowance payable to him during the said period. Upon Mrs. Jaya Jain joining the duties, the workman was to revert back to his place of posting at the same salary which he was drawing prior to the said assignment. He was promoted to the cadre of Senior Assistant on 11th June, 92 and his pay was fixed taking into consideration the pay which he was drawing as an Assistant and the functional allowance paid to him was not taken into consideration. The contention of the workman that he was entitled for taking into consideration the functional allowance was not sustainable and the claim of the workman was, therefore, not liable to be allowed and his pay was correctly fixed by the Management. The Management examined Shri S. P. Mittal MW1 while the workman himself appeared as WW1 in support of their case.

4. I have heard the representatives for the parties and have gone through the record.

5. Representative for the workman has urged that since he was entrusted with the duties of Cashier by the Management and was ordered to be paid functional allowance as per rule so the said functional allowance should form part of the pay to be refixed on his promotion. He had admitted the work as Cashier and the functional allowance was admittedly paid to him by the management so the management could not deny him the benefit of merger of the said functional allowance in the new scale when he was promoted.

6. The Management on the other hand has urged that the workman was given additional charge of the cashier and was not regular collective cashier he had worked from 21st April, 92 to 10-6-92 when he was promoted in the cadre of Senior Assistant and his pay was fixed taking into consideration his pay drawn by him as an Assistant. The workman was not a regular cashier and was only performing the job of another employee on leave and had no lien on the job carrying special functional allowance and had been paid this allowance only for a small period of two months, in the leave vacancy of Mrs. Jaya Jain. He, therefore, was not entitled to the merger of functional allowance in his revised pay on promotion. After having gone, through the points urged before me by the representatives for the parties, I am of the opinion that the functional allowance paid to any workman during the period he performs the special job of which he has no lieu cannot be taken into consideration for fixation of salary. Similarly the functional allowance paid to the workman during the period he performed the job as cashier was not taken into consideration as he had no lien over the post of the cashier or functional allowance paid to him which work he performed as a stop gap arrangement in place of Mrs. Jaya Jain. Mrs. Jaya Jain was regular cashier and was also paid functional allowance during her leave period. The contention of the workman that he be deemed to be a regular cashier was absolutely misconceived and untenable. According to the rationalisation scheme of the General Insurance Corporation the Vth schedule of the said scheme relates to payment of function allowance. The employees engaged in any of the given function as their regular and main function were to be paid functional allowance as indicated therein. It has been provided in the same scheme that an employee proceeding on leave would be paid the functional allowance during his leave period other than periods of extra ordinary leave provided that he resume work in the same position on expiry of his leave. This fact resumes himself from the fact that Mrs. Jaya Jain who was working as regular cashier before proceeding on maternity leave joined her duties on the same post and thus was entitled for the functional allowance even for the period during which she was on leave. The allotment of job to an employee was prerogative of the management and the workman concerned was entrusted with the duties for a short interval who had no lien over the post or the functional allowance. He was therefore, not entitled to any relief and the action of the management was fully justified.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 24 जून, 1998

का० आ० 1424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया, नई दिल्ली के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-98 को प्राप्त हुआ था ।

[संख्या एल-12012/39/92-आई०आर० (बी०-3/बी०-I]
सनातन, डेस्क अधिकारी

New Delhi, the 24th June, 1998

S.O. 1424.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India, New Delhi and their workman, which was received by the Central Government on 23-6-98

[No. L-12012/39/92-IR B-3/B.I.]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 48/92

In the matter of dispute :

BETWEEN :

Shri Durgesh Pandey, Clerk,
through Mahasachiv,
State Bank of India Staff Association,
2124/2, Hari Singh Nalwa Street, No. 58,
Karol Bagh, New Delhi-110005.

Versus

Zonal Manager (Zone IV),
State Bank of India,
11, Sansad Marg,
New Delhi-110001.

APPEARANCES :

Shri J. N. Kapoor—for the workman.
Shri P. K. Gupta—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/39/92-I.R. (B-3), dated 14-5-92 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of State Bank of India in dismissing Shri Durgesh Pandey, Clerk at the Connaught Circus Branch New Delhi, vide their letter dated 6-12-90 is just and legal ? If not, to what relief is the workman entitled to ?"

2. In the statement of claim workman has stated that he was appointed on the basis of sports as a Hockey Player on 25-4-88. He was placed under suspension on 2-8-88 on false and flimsy grounds with a view to harass and victimise him. He was also charge sheeted vide letter of the same date. Shri A. K. Ralhan was appointed as Enquiry Officer but his enquiry according to the statement of claim was held exparte and order of dismissal was passed. Fresh enquiry was again conducted at the request of the workman. In the fresh enquiry again enquiry officer found him guilty and his service were again ordered to be terminated by the disciplinary authority. It was further alleged that no personal hearing was granted to the workman while disposing of the appeal by the Appellate Authority. It was further alleged that the management illegally dismissed the services and the order of termination was malafide. Prayer has been made that he be reinstated with full back wages and the order of dismissal be set aside.

3. The Management in its written statement alleged that the enquiry conducted against the workman was fair and proper and workman was guilty of committing fraud. The exparte enquiry was earlier held bacuse the workman did not respond to the enquiry officer. Though notices were sent to him, however, in the interest of justice enquiry was reopened and fresh enquiry was done in which the workman admittedly and the enquiry was conducted according to rules. The punishment was imposed on the workman by the disciplinary authority after going through the enquiry report. The appeal filed by the workman was also disallowed on merits.

4. The management in support of its evidence examined Shri A. K. Ralhan Enquiry Officer, MW1 and the workman did not appear even as a witness for himself.

5. I have heard representative for the parties and have gone through the record.

6. The representative for the workman has not pointed out any informity in the enquiry and has only stated that the finding of the enquiry officer were biased and not based on facts. In view of the fact that the workman has not even come into the witness box to state on oath regarding any infirmity or illegality in the enquiry proceedings which could prejudice him, I am of the opinion that the enquiry conducted by the management in this case was fair and proper.

7. I have heard representatives for the parties regarding the quantum of sentence awarded to the workman. The workman representative in this case has urged that the action of the management to dismiss the workman was not bona fide principles of natural justice have been violated and the material on the basis of which the management came to certain conclusions would not justify the dismissal of the workman.

8. The order dated 6-12-90 was illegal, unjustified and as such liable to be quashed.

9. It has further been asserted by the representative for the workman that the workman had put in only 33 days of service and was not fully acquainted with the procedure of the banking. The lapse have taken place because of his inexperience and was not given proper tarining for conducting the work of the Bank. It has been urged that the punishment lesser than dismissal may be awarded to the workman. The Management representative on the other hand has alleged that the charges levelled against the workman were serious in nature and do not call for continupance of such an employee in the Management of the Bank. The Institution of Banking is an Institute which work on the faith of the customers on its employees and if that faith is shattered such institutions cannot function effectively nor given the desired satisfaction to the customers. The punishment awarded to the workman, therefore, was fully justified and he had committed fraud which was proved beyond doubt.

10. After careful perusal of the points urged before me regarding quantum of punishment awarded to the workman I am of the view that the charges against the workman were as follows :—

(i) "On 28th May, 1988, you made a superflous entry for Rs. 1200/- on the credit side of your S/B A/c No. 5797 maintained at our Connaught Circus, New Delhi. You also struck out the balance as Rs. 1980/- and put the forged initials of Shri Sunil Kwatra as purported to have been authenticated by Shri Kwatra."

(ii) On 13th June, 1988, you withdraw a sum of Rs. 1000/- on the basis of fradulent credit entry of Rs. 1200/- having been made by you in your account No. 5797 referred to above despite the fact that you did know that neither any cash nor any instrument had been deposited by you for the credit of your account on 28-5-88."

Both the charges were found to have been proved by the Enquiry Officer and the enquiry as discussed earlier was found to be fair and proper.

11. In view of this situation, the charges of fraud have been proved the enquiry being fair and proper the disciplinary authority having considered all the facts of the case and then awarding him proposed punishment, the action of the management was fully justified. There is no ground to intervene and the workman was, therefore, not entitled to any relief. Parties are, however, left to bear their own costs.

15th June, 1998.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 25 जून, 1998

का०आ० 1425.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ मदुरा लिमिटेड के प्रबन्धतन्त्र के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद मे केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-6-98 को प्राप्त हुआ था ।

[संख्या एल-12012/27/94-आई०आर० (बी० I)]
सनातन, डैस्क अधिकारी

New Delhi, the 25th June, 1998

S.O. 1425.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Dhanbad as shown in the Annexure, in the industrial dispute between the empowers in relation to the management of Bank of Madura Ltd. and their workman, which was received by the Central Government on 24-6-1998.

[No. L-12012/27/94-IR(B-I.)]
SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947

REFERENCE NO. 26 OF 1994

PARTIES :

Employers in relation to the management of Bank of Madura Ltd. and their workmen.

APPEARANCES :

On behalf of the workman.—Shri D. K. Jha, Advocate.

On behalf of the employers.—Shri K. N. Gupta, Advocate.

STATE : Bihar. INDUSTRY : Banking.

Dated, Dhanbad, the 17th June, 1998

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.L-12012/27/94-I.R.(B-I) dated, the 6th May, 1994.

SCHEDULE

"Whether the demand of Bank of Madura Employees Union, Patna for regularising Shri Anand Kishore Naugariya, in the post of Special Assistant is justified ? If so, to what relief the workman is entitled ?"

2. The Branch Asstt. Secretary of Bank of Madura Employees Union on behalf of the sponsoring union has put forward a claim in the W.S. for the workman Shri A. K. Naugariya by making out a case to the effect that Shri Naugariya was appointed as a probationary clerk in the Bank by order dated 20-9-1978 issued by the Bank of Madura Ltd. in pursuance of which Shri Naugariya joined the services in the Bank at Patna on 28-9-1978. The Bank of Madura falls under private sector having only one branch in the State of Bihar at Patna. Shri Naugariya the concerned workman was confirmed in the services with effect from 28-3-1979 vide Bank's order dated 10-4-1979 and he started contributing to the P.F. under order of the Bank authority. The concerned workman was allowed annual increment of Rs. 20 from 1-1-1980 vide branch order dated 28-3-1980 and he continued in drawing increment in the subsequent years upto 1994. The concerned workman after joining the services of the Bank discharged his duties to the satisfaction of his superior officers. He is a science graduate and has a brilliant service career in the Bank for which he was authorised to perform the function of Special Assistant at Patna Branch with effect from 19-10-1992 and was also allowed permanent special allowance @ Rs. 524 and H.R.A. of Rs. 47.30 per mensem. The concerned workman was performing the duties as Special Assistant from 19-10-1992 and was getting permanent allowance for the same regularly and deductions from the Special Allowance was also made in his Provident Fund. The Bank Management issued orders for performance of the duties of Special Assistant on 16-4-1993 by the workman for his working as Special Assistant for the period from 19-10-1992 to 30-6-1993 and the workman continued performing his duties as special assistant even beyond 30-6-1993. While so continuing as Special Assistant the Bank employees association, Patna unit placed demand before the Bank management for making him permanent in the post of Special Assistant by its letter dated 25-5-1993 and also by a reminder issued subsequently on 11-6-1993 under certificate of posting to which, however, the Bank management did not respond. The union, therefore, raised an industrial dispute over the issue before the RLC(C), Patna by letter dated 27-10-1993 for intervention into the matter under the provision of I.D. Act, 1947 and for an amicable settlement. After raising such industrial dispute before the RLC(C), Patna the Bank management stopped the workmen from performing the duties of Special Assistant but he receipt of the notice from the RLC(C) Patna the management allowed the concerned workmen to perform the duties of Special Assistant till 16-11-1993 and also issued order in the ballot book. The RLC(C). Patna intervened in the industrial dispute and made attempt by way of discussion for conciliation on various date but the attempt ultimately ended in failure on 20-12-1993 because of the uncompromising attitude of the Bank authority on failure the RLC(C) submitted failure of conciliation report to the Govt. of India, Ministry of Labour by

his letter dated 9-2-1994. The Bank authority, however authorised another employee named Shri Ram Naresh Sharma, Clerk to perform the duties of Special Assistant at Patna from 15-2 1994 but went on paying special allowance to the concerned workmen, Shri Naugariya till 28-2-1994. The Govt. of India on consideration of the failure report of RLC(C), Patna opined about the existence of industrial dispute and as such refered the same under Section 10(1)(d) of the I.D. Act to this Tribunal for adjudication giving rise to the present reference which is the out come of the failure of conciliation report submitted by the RLC(C), Patna. The action of the management in not regularising the services of the concerned workman for the post of Special Assistant is arbitrary, illegal, malafide, motivated and unjustified on the ground that the concerned workman was authorised to perfrom the duties of Special Assistant and that he performed the duties of Special Assistant for more than a year for which the concerned workman should have been declared as regular holder of the post of Special Assistant. The Bank management has already stopped the workman concerned from the duties of Special Assistant when the sponsoring union raised an industrial dispute before the RLC(C) demanding regularisation of the services of Special Assistant of the concerned workman. Had there not been any such action for the concerned workman by this sponsoring union the concerned workman might have continued in the post of Special Assistant without any interuption. Thus the action of the management in not regularising the services of the concerned workman as Special Assistant is against the settled law of Hon'ble Apex Court and decisions of different Hon'ble High Court. The order for stoppage of duties of Special Assistant by the concerned workman by the management was only to deprive him the status and privileges of being permanent in the post which amounts to unfair labour practice. The Bank management has now created 50 posts of Special Assistant in various branches of the Bank and the concerned workman can be regularised against the existing vacancies of Special Assistant falling in the State of Bihar at Patna branch. The Bank management treated the concerned workman as permanent in the post of Special Assistant by granting him special allowance even during leave period. The performance of the duties of the concerned workman as Special Assistant is to be counted upto 28-2-1994 as he was paid special allowance/wages for the post till that date and as special allowance was part of the wages and deductions in the P.F. of the concerned workman was also made from that allowance. Since the Bank authority is under obligation to declare the concerned workman to be regular in the post of Special Assistant as the Bank has utilised the services of the concerned workman as Special Assistant for the period of more than a year, and was intentionally stopped from performing the duties in such post only at a stretch when an industrial dispute was raised by their sponsoring union before the RLC(C), Patna The manner in which the Bank management issued order to perform the duties of Special Assistant will itself show the existence of a post of Special Assistant in the Patna Branch of the Bank and as such the Bank management could have regularised the services of the concerned workman in that post and on all these grounds the sponsoring union has prayed for an Award by an order with direction to the Bank management to make regular the workman concerned in the post of Special Assistant by granting him the scale of pay in that post with full back wages from the date on which he was stopped from work as Special Assistant.

3. The management of Bank of Madura Ltd. also filed W.S. and rejoinder wherein the management has challenged the maintainability of the reference by claiming that the reference of dispute is not maintainable either in law or in facts and circumstances and the same is bad as no demand by a competent body has been raised before the management. The union representing the case of the concerned workman is not at all competent to raide the dispute as no demand of purported industrial dispute was made before the management prior to the date when it was taken up for conciliation proceeding by the ALC(C). The union wrote a letter to the ALC(C) directly and raised the dispute although it is well settled that dispute/demand is to be raised first before the employer but in the instant case as no such dispute or demand was raised or made before the employer there is no industrial dispute under the law. The management has also made out a case in the W.S. that the terms and condition of service of the Bank employees belonging to clerical and sub-cadre are regularised by statement entered into between the management and the union from time to time which are bidnig upon the parties and in view of such settlement it was agreed that whenever any clerical staff is required to discharge certain duties in addition to his own normal duties he would be paid certain amount for such additional duties. Such arrangement is necessary in view of the sudden absence of the officials of the Bank and also on account of other exigencies of work. There has never been any settlement nor there is any rule or even practice to regularise an employee and pay him special allowance permanently if he required to discharge some additional duties for sometimes due to exigency of work and as such the concerned employee Shri Naugariya has neither any legal right to claim nor any right to draw special allowance on permanent basis as there is no sanctioned post of the cadre of Special Assistant and unless there is any such sanctioned post the question of regularising any person on that post cannot arise. The demand of the sponsoring union is therefore superfluous. The union cannot demand to create certain post and then to regularise the services of employee like Mr. Naugariya who is, was required to discharge certain additional work for a temporary period on account of exigencies of work. The Bank has only three class of employees which are officials clerical and sub-staff. There was no post of any Special Assistant and Shri Naugariya who belongs to clerical grade working as clerk on permanent basis was directed to perform certain additional work and thereby to discharge the duties of Special Assistant for temporary period, but without any assurance that he would be allowed to continue to hold the post of Special Assistant for an indefinite period and thereby to draw special allowance permanently. Shri Naugariya whenever was asked to discharge the duties of Special Assistant he was paid special allowance as per settlement and deductions towards P.F. on such additional amount was also made in terms of the settlement. Such special allowance was sometimes allowed even during leave period on the ground of

equity. The management has claimed in their W.S. that such arrangement of entrusting clerical staff to perform duties of special assistant not only due to sudden absence of officials but also with a view to render satisfactory quick service to the customers of the Bank. The Bank management has legal and inherent right to stop such temporary arrangement arising out exigencies of work like absence of officials and in the instant case to stop Shri Naugariya from performing the additional duties of Special Assistant on account of absence of officials for sometimes. The post of Special Assistant is higher than that of clerical cadre carrying certain monetary benefits simply because special allowance duties entrusted to an employee like Mr. Naugariya no new designation is given to him for which such order by the management can be withdrawn. The demand of the union for regularisation of the services of the concerned employee amounts to promotion to higher post and that too without considering the case of other eligible candidates and the management was unable to do that. The management has denied the claim of the concerned workman that he is the Senior most of the clerical cadre of Patna branch. It is the demand of the management that there are other employees senior to Mr. Naugariya who also perform the duties of Special Assistant. The concerned employee has no claim for regularisation at present in as much as the Bank management has stopped taking the services of clerical staff as Special Assistant with effect from 16-11-1993 but as the conciliation proceeding was pending Shri Naurgariya was allowed to draw special assistant upto 10-2-1994. Thereafter he has neither performed the duties of Special Assistant in addition to his own nor being paid any additional amount as special allowance. Further claim of the management is that it is not only the concerned employee who was asked to perform the duties of Special Assistant but there are other employees too who have also performed the duties of Special Assistant for a considerable period for which they have also been paid certain amount to which they were entitled for such additional duties. The management has claimed that order directing certain clerical staff to perform duties of Special Assistant being temporary in nature such order looses its force and is automatically vacated or ceased after expiry of such temporary period for which direction for performing additional duties was issued. The management has denied the contents of para 1 to 12 of the W S. of the union for the concerned workman by describing the contents of those paras to be irralevant being matters of record. The management has also denied the contents of para 13 to 17 of the W.S. of the union so far brilliant service career of the concerned workman are concerned. The management has also denied the contents of para 18 and 19 of the W.S. of the workmen filed by the union by denying the receipt of any letter dated 25-5-1993 demanding any order by the management for treating the concerned employee as permanent in the post of Special Assistant and or any reminder subsequent thereto. The contents of para 20 to 23 have not been denied while that of para 24 it is the claim of the management that the same is matters of record. But at the same time the management has denied of doing any illegal act in not giving the work of Special Assistant to the concerned employee. Similarly the management has also abstained from challenging the contents of para 25 and 26 of the union's W.S. on the ground that those are matters of record but so far contents of para 27 of the Union's W.S. is concerned the management has claimed that the ground mentioned therein are not at all good valid or genuine on the ground that simply because the concerned employee was authorised to perform certain duties of Special Assistant for a temporary period or for a period of about a year such performance of duties of special assistant cannot and does not create any legal right to claim the post on permanent basis for which the management has claimed that the management was quite justified in not giving the concerned employee additional duties after expiry of certain times. The management in para 30 in their W.S. and rejoinder has pleaded their ignorance of the legal position laid down by the Hon'ble Apex Court or Hon'ble High Court and ultimately in para-31 the management has made out a case that the Bank of Madura employees union of which the concerned workman is a member by their letter dated 29-6-1993 approached the management with a demand for scheme of posting of Special Assistant on permanent basis which according to the management is a circumstances to prove the fact that there was no existence of the post of Special Assistant in the Bank of Madura. However, the case of the management is that by virtue of a settlement dated 11-3-1994 a decision was taken to create posts of Special Assistant and to select suitable person from clerical cadre members of the Bank and this settlement shall be in force for a period of 2 years for which applications from clerical members of the staff were invited in response to which the concerned work man Shri Naugariya also applied without any protest whatsoever and his case like that of other are pending for consideration. In that view of the matter the claim of the management is that the present reference requires no adjudication. It is also the claim of the management that the management has treated the concerned employee as permanent in the post of Special Assistant and that the management paid him special allowance till 10-2-1994 due to the pendency of the conciliation proceeding although the concerned employee performed the duties of special assistant upto 16-11-1993. The management has blamed the union for exhibiting biased attitude against another clerical member of the Bank who is also a member of the employees union named Shri Ram Naresh Sharma for entrusting him the duties of special assistant and thereby to pay him special allowance and on all these grounds the management has claimed that the concerned workman is not entitled to be regularised in the post of Special Assistant and thereby to grant him the scale of the post with retrospective effect. Natually, the management has praved for that an Award to the effect that the concerned workman is not entitled to be regularised in the post of Special Assistant, should be passed.

4. The union on the side of the workman filed a rejoinder as against the W.S. of the management and also replied to the rejoinder filed by the management wherein the union has prayed that the W.S. so filed on the side of the management is liable to be rejected for want of proper verification. The union in the rejoinder has denied the contents of different paras of the W.S. of the management and at the same time claimed that when the Central Govt. after the con-

sideration of the failure report of the Conciliation referred the dispute to this Tribunal for adjudication it should be presumed that an industrial dispute existed, maintainability of the reference is therefore not tenable as claimed on the side of the management in their W.S. The union has properly raised the industrial dispute and the Central Government on appreciation of the same has rightly referred the same to this Tribunal for adjudication and it is therefore quite maintainable both under law and facts and circumstances. The union has abstained from giving any comments to the contents of para 6 to 8 being matter of record and misconceived respectively. By separate claim of the rejoinder the statement made in para 9 of the W.S. of the management is incorrect and irrelevant in as much as it is not the claim of the union for creation of any post of Special Assistant and thereafter to regularise the services of the concerned workman. The contents of para-10 no comments have been made by the union but denied the claim of the management in para-11 of their W.S. that the concerned workman was discharging the duties of Special Assistant only on account of exigencies of work. Similarly the union has abstained from making any comment in respect of the contents of para-12 and 13. So far the statement made in para-14 the written statement claim of the union is that the same is not only incorrect but also contradictory in as much as in para-10 of their W.S. the management have taken the plea of non-existence of the post of Special Assistant at Patna branch of the Bank and at the same time the employee concerned was asked to discharge the duties of Special Assistant on account of absence of the officials for a day or two without citing any specific instance, name of the officials due to whose absence a direction upon the concerned workman to perform the duties of Special Assistant was issued. In respect of para-15 the claim of the union is that the contents of the same is not relevant for the purpose of adjudicating the dispute and as such abstained from making any comment thereto. The union has denied the contents of para-16 by describing the same to be misleading in as much as the concerned workman was authorised to work as Special Assistant from 19-10-1992 to 16-11-1993 and was stopped from performing the duties of Special Assistant when an industrial dispute was raised before the RLC(C) Patna by the union claiming regularisation of the services of the concerned workman. The union has claimed that the contents of para-17 of the W.S. of the management are not at all correct. The question of designating the concerned workman as Special Assistant is relevant and so far contents of para-18 is concerned the claim of the union is that the same is misconceived and in respect of para-19 since these are based on facts and denied. The union has claimed the contents of para-20 of the W.S. as misconceived and that the concerned workman was authorised to work as Special Assistant from 1992 to 1993 for whcih he was paid wages upto 28-2-1994 and not paid upto 10-2-1994 as stated in the W.S. of the management. In respect of the contents of para-21 of the W.S. the claim of the union is that the same is baseless and irrelevant while that of para-22 the same is misleading in as much as the bipartite settlement dt. 19-10-66 is not applicable to the Bank management as the management was not a party to it. The union has described the statement made in para-23 of the W.S. as incorrect and evasive for want of specific denial of the statement made by the concerned workman in the W.S. and the same is liable to be rejected. Similarly the union has claimed the contents of para-25 as misleading and the same are denied. The union has also denied the contents of other paras of the claim of the management in their W.S. in para-30 of asking the clerical staff to work as Special Assistant should be treated as vague because of the failure of the management to cite any specific settlement in this behalf. The union has claimed that in the statement made in para-32 of the W.S. there was material suppression of facts in respect of payment of special allowance to the concerned workman who was paid such allowance upto 28-2-1994. Further claim of the union in the rejoinder is that the action of the management from stopping the concerned workman to perform the duties of Special Assistant at a stage when an industrial dispute was raised and conciliation proceeding before the ALC(C) Patna was pending which amounts to unfair labour practice and on all these grounds the union has prayed for an order directingg the management to regularise the services of the concerned workman in the job of Special Assistant with effect from 10-2-1992 and to grant such further consequential benefits as claimed by the workman in the W.S.

5. The management submitted additional W.S. after filing of the rejoindner on the side of the union and also replied to the rejoinder filed by the union on the side of the workman. But on perusal of the record including the W.S. filed on the side of the management I find no such leave was taken from the Court for the purpose of submission of reply to the rejoinder submitted on the side of the concerned workmen or to submit additional W.S. The order sheet also do not reflect if any such leave was granted to the management for the additional W.S. I am, therefore, not inclined to incorporate the facts mentioned in the additional W.S. or denial made in reply to the rejoinder of the union on the side of the workman.

6. The points for decision is whether the concerned workman is entitled to the relief prayed for in his W.S. by answering the point of reference in affirmative by way of adjudication.

7. Both parties have adduced oral as well as documentary evidence in support of their respective cases. The union on the side of the workman has adduced oral evidence by examining the concerned workman Shri Anand Kishore Naugaya who has posed himself as WW-1 and another named Mukesh Kumar Rastogi who is also an employee of Bank of Madura Patna branch as WW-2. In addition to the oral evidence the union has produced and proved a number of documents admitted in evidence and marked as W-1 to W-30. The management on the other hand has examined only one witness on their side named T. Palaniappan who was attached to Patna branch during the period from 8-5-1992 to 21-6-95 and was posted as Marketing Manager of the Bank of Madras Region on the date of his examination. The witness has posed himself as MW-1. The manage-

ment has also produced a good number of documents admitted in the evidence marked as Ext. M-1 to M-37 which include certain circular letter, photo copy of attendance register of the employees of Patna branch etc. WW-1, the concerned workman Mr. Anand Kishore Naugariya during his examination has claimed that the branch of the bank at Patna was opened on 22nd September, 1976 and he joined the same branch on 28-9-1978. He was confirmed with effect from 28-3-79 over which there is no dispute. It is also in his evidence that in the State of Bihar there is only one branch of Bank of Madura which is situated in, Patna over which also there is no dispute. An employee of the Bank named Ram Naresh Sharma joined at Patna branch on his transfer from Calcutta on own seeking. During his examination-in-chief he has also stated that seniority list of the members of the staff of the Bank was never circulated within the State of Bihar and thereby objection, etc. was also not invited although the union of the employee claimed circulation of such seniority list. Thereafter the witness has stated how he worked as Special Assistant from 19-10-1992 to 28-2 1994 on the basis of the verbal direction and sometimes on the basis of the written order but he was removed from the post by the management on receipt of a notice from the RLC (C) Patna claiming regularisation of the services of the witness in the post of Special Assistant and that too wihout assigning any reason. Thereafter the management entrusted junior member of the staff with the duties of Special Assistant. It is also the claim of the witness that he was asked to perform the duties of special assistant because of his satisfactory quality of work for which no senior clerk of the Bank raised any objection. The witness has stated that subsequently 50 new posts of Special Assistant was created but the same was after raising the dispute by the union yet the witness applied for one such post but for the reasons best known to the management he was not even called for in the interview. Those posts of Secial Assistants were required to be filled in on the basis of Statewise seniority. But as the management was not satisfied because of raising of the dispute by the union for the concerned workman and were rigid the case of the concerned workman for appointment in the post of Special Assistant even after creation of 50 posts of Special Assistants throughout the nature was not at all considered. He has denied on the ground of non-existence of any post under the nomenclature Special Assistant and that even on the date of his examination at least four vacancies for the posts of Special Assistant were yet to be filled up. This is the sum and substance of the evidence adduced by the concerned workman. During his cross-examination so many questions were put to the witness about the settlement between All India Union and the management on 26-9-1967, the terms of argument of such settlement being of binding character and the terms and conditions of such settlement having reference to the settlement dt. 19-10-1966, publication of the same in the form of the book etc. During cross-examination-it-was-elucidated-that like that of the concerned workmen Shri Ram Naresh also dischargtd the duties of Special Assistant for more than 240 days while the concerned workman himself discharged such duties from 19-10-1992 to 16-11-1993 but he was paid special allowance for subsequent period too. An attempt was made to prove by way of cross-examination to this witness that in fact no demand for regularisation of service of this witness was made by the union to the management and without doing so the matter was raised before the RLC(C) Patna but to no purpose and the witness has denied the same.

8. WW-2 as I have already stated is also an employee of Patna branch of the bank. His evidence is that WW-1 worked in the post of Special Assistant for more than a year and according to him the union submitted demand for regularisation of the services of WW/1 in the post of Special Assistant but the bank Management declined to accept the demand for which the matter was referred to the RLC(C) Patna. There is also no conciliation took place between the management the union for which failure report was submitted and the matter was ultimately referred to Tribunal for adjudication. According to him Shri Ram Naresh was working at Calcutta in 1975 and he joined at Patna branch on transfer in the year 1987. Prior to that he was also transferred to Patna like that of WW-1. This witness also did not see the seniority list of the employees of the Bank of State of Bihar but as per version of the witness he heard about the existence of the seniority list maintained by the management. Such seniority list was demanded by the union from the management but for the reason best known to the management no such seniority list was prepared. The witness discloses that he had no knowledge if the Bank joined in the Bipartite settlement dt. 19-10-1966 and that according to him WW-1, the concerned workman was the senior most clerk when he was given the responsibility of Special Assistant. It is also in his evidence that Shri Ram Naresh was also appointed as Special Assistant but during the pendency of the conciliation proceeding concerning WW-1 before the RLC(C) and during that period both Shri Sharma and WW 1 were paid special allowance for the post of Special Assistant The witness, however, expressed his ignorance about the existence of the post of Special Assistant but at the same time the witness claimed that the concerned workman worked in that post. During cross-examination like that of WW-1 questions were also put to the witness about his knowledge in respect of the sanctioned post of Patna bronch of the Bank, etc. The witness has expressed his ignorance if the duties of special assistant used to be entrusted to the clerical grade staff of the Bank only on account of exigency of work. Questions put to the witness during cross-examination were practically based as to his knowledge in respect of seniority of the members of the staff of Patna branch. etc. Without putting direct question contradicting the claim of the witness of the performance of duties by WW-1 in the post of Special Assistant for the period as claimed by WW-1 during his examination or pleaded in the W.S. filed by the union. Similarly no question was put to the witness in respect of payment of special allowance to WW-1 even for certain period when he was removed from the post of Special Assistant after raising an industrial dispute before the RLC(C) Patna demanding regularisation of the service of WW 1. The evidence of this witness during cross-examination thus practically of little rather of no help to the management for the purpose of proving non-existence of the post

of Special Assistant at the relevant period of Patna branch or for the purpose of justifying the action of the management in stopping WW-1 from performing the duties of Special Assistant at a stage when there was no complaint in respect of his duties as Special Assistant but because of the fact that an Industrial rispute was raised before the RLC(C), Patna claiming regularisation of the services of WW-1 in the post of Special Assistant.

9. On the other hand the management as I have already stated has adduced oral evidence by examining only one witness who was attached to Patna branch of the Bank from 8-5-1992 to 21-6-1995 although the admitted position is that WW-1 was attached to Patna branch of the Bank prior to the posting of MW 1 in that branch. Be that as it may, the evidence of this witness is that he was at Patna when the dispute concerning WW-1 was raised and conciliation proceeding started before the RLC(C) Patna. According to him the Bank of Madura Employees Union is a majority union and the same is on All India level having recognition as solo bargaining agency on behalf of the employees who are in the services of the Bank and that although the Bank of Madura was not a party to the settlement which took place between the management of different banks in the year 1966 but there was settlement between the management and the union subsequent in which the terms and conditions of settlement of 1966 were adopted with certain modifications and that settlement is binding both upon the management and upon the union including that of which the concerned workman is a member. It is the claim of the witness during his examination-in-chief that no letter of demand for regularisation of the services of the concerned workman was received by the management of the Bank of Patna branch or any letter dt. 25-5-93 including a reminder and that the time when the demand was made there was no necessity of creating post of Special Assistant. He has also deposed to the effect that Shri R. N. Sharma and B. B. Kumar Sinha were senior to the concerned workman who were attached to Patna branch and that the seniority list of the members of the staff of Clerical grade is in fact maintained on All India basis and not on Statewise. It is the claim of the witness that the concerned workman Shri Naugariya was not the sole employee of the Bank of the clerical cadre who was entrusted with the duties of Special Assistant and like that of him other employees too were entrusted with such duties in case of exisgencies of work, etc. Thus the witness has tried to prove that in fact there was a settlement between the union of the employees of the Bank in which the terms and conditions of the settlement of the year 1966 between the management and the employees union were adopted subsequently which are binding both upon the management and the union and thereby the employees of the Bank. Secondly the witness has tried to prove that no branchwise seniority was maintained in respect of the employees of clerical grade and that in fact such seniority list is maintained in nationwise for all the employees of the Bank in different branches. He has also tried to prove that view of the matter the concerned workman was not the senior most member of the staff of Patna branch and has claimed that for getting preference in the matter of consideration of his claim for appointment as Special Assistant for which a number of posts were created subsequently but the witness had no alternative but to admit during cross-examination that in fact Shri Naugariya performed tht duties of Special Assistant for more than 240 days in a year but such performance are under different orders. Similarly the witness has though tried to prove that the seniority of the members of the clerical staff are not maintained in Statewise basis yet no paper in support of the claim of the witness has been produced rather a paper showing seniority list of the clerk of the Bank of Patna branch has been produced during hearing of the reference. If it was a fact that no seniority list in the branchwise was at all maintained then I fail to understand what insisted the management to produce seniority list of the members of the staff of the Bank of Patna branch showing the position of the concerned workman Shri Naugariya to be third in order of seniority vide Ext. M-29. This is a circumstance which goes to show that in fact the seniority list was actually not maintained on countrywise basis for all the employees of the Bank at different places of the country. Had it been so the management must have produced such list of the seniority of the members of staff and must not have produced Ext. M-29. It is an admitted position that the senior most clerical staff Shri R. N. Sharma was attached to Calcutta branch of the Bank and he was transferred to Patna branch on own seeking basis for which he was not allowed any T.A./D.T. Any paper such as order like paper showing terms and conditions of the terms of transfer of R N. Sharma from Calcutta to Patna branch has not been produced to show that even in case of his own sitting transfer he would not loose the seniority. The clerical staff were called for interview for 50 posts of Special Assistant on the basis of 1 : 2 if no seniority list in maintained in countrywise basis and if as per Ext. M-29 such list is maintained on branchwise basis in that case it can safely be said that the concerned workman was attached to Patna branch from before Shri R. N. Sharma who joined there on his transfer from Calcutta should have been considered. Learned Advocate argued much about the non-submission of any demand by the union for regularisation of the services of Shri Naugariya as Special Assistant but the evidence of MW-1 on this point is quite contradictory. During cross-examination the witness categorically stated that the management did not accept the claim of the concerned workman for regularisaion in the post of Special Assistant if it is a fact that there was no claim for regularisation of the services of Shri Naugariva as Special Assistant. I fail to understand how the management could not accept the claim. The witness at subsequent stage of his cross-examination has made a contradictory statement to the effect that on receipt of the notice from the RLC(C), Patna they came to know about the dispute for the first time In view of the contradictory nature of statement it seems to be that the witness is not worthy of any trust and it is not at all safe to place reliance upon his statement he made during his examination in the Court. The papers produced on the side of the workmen such as

certain orders showing posting and certain letters clearly prove that in fact there was demand on the side of the union for the concerned workman to regularise the services as Special Assistant. Since as I have already stated that the concerned workman worked as Special Assistant for 240 days within a period of one year and over which there is no dispute, he is certainly entitled to an order for regularisation of his services as Special Assistant specially when a number of vacancies of such Special Assistant say about 50 have already been created and when it has not been disputed that the post of such Special Assistant of Patna branch is yet to be filled in. Learned Advocate on the side of the management argued much by relying on several decisions reported in 1994 LIC Page 1197, 1992 LIC Page 847, 1992 LIC Page 2055, 1993 page 836 that there was no scope of regularisation of the services of Shri Naugariya at the relevant time as there was no post of Special Assistant although subsequently he applied for consideration of his candidature for the post of Special Assistant but under the advice of so-called friends and well wishers he abstained from appearing before the interview board for the purpose of selection, and as such when there was no existence of post of Special Assistant when Shri Naugariya performed the duties of such Assistant no Award in his favour in terms of prayer in the W.S. submitted on the side of the concerned workman should be passed. On the other hand Learned Advocate on the side of the concerned workman submitted that when there was no dispute of the performance of duties of Special Assistant by the concerned workman for 240 days in a year and when it is apparent on the face of the record that the concerned workman was stopped from performing the duties of Special Assistant by the management at a stage when the management received notice from the RLC(C) Patna about the raising of the dispute for and on behalf of the concerned workman unbecoming of model employer like the Bank of Madura, Learned Advocate by relying on the decision of Hon'ble Patna High Court of Judicature in the Civil Writ Jurisdiction No. 92 of 1989 that since it has not been disputed that Shri Naugariya rendered the services of Special Assistant for 240 days and he was paid special allowance not only for that period but for the subsequent period also although he did not perform the duties of Special Assistant, his services should be regularised in the post of Special Assistant. Learned Advocate on the side of the management tried to submit that the decision so relied upon on the side of the workman is not applicable in the instant case but learned lawyer abstained from satisfying me as to why the decision so relied upon on the side of the concerned workman is not applicable in the instant case. I, therefore, relying on that decision and keeping in mind the facts and circumstances of the case under which Shri Naugariya the concerned workman was stopped by the management from performing the duties of the Special Assistant after receiving notice from RLC(C) Patna etc. cannot but hold that the claim of the union for the concerned workman is quite justified and he should be regularised in the post of Special Assistant because of the number of days for which he performed the duties of such special assistant. Thus on consideration of all these facts and circumstances, the evidence on record and the submissions made on behalf of the respective parties I hold that the concerned workman Shri Anand Kishore Naugariya is entitled to a favourable order for regularisation of his services in the post of Special Assistant. The demand of Bank of Madura Employees Union, Patna for regularising Shri Anand Kishore Naugariya in the post of Special Assistant is justified. The concerned workman is entitled to the relief prayed for. The above point is thus decided in favour of the concerned workman and against the management.

10. The management is allowed two months time for regularisation of the services of Shri A. K. Naugariya, the concerned workman in the post of Special Assistant from the date of publication of the Award in the Gazette of India.

This is my Award.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 26 जून, 1998

का.आ. 1426.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद मे श्रम न्यायालय, अर्नाकुलम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-6-98 को प्राप्त हुआ था।

[सं. एल-12012/103/97-आईआर(बी-II)]

सनातन, डैस्क अधिकारी

New Delhi, the 26th June, 1998

S.O. 1426.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workman, which was received by the Central Government on 25-6-98.

[No. L-12012/103/97-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM

(Labour Court, Ernakulam)
(Tuesday, the 28th day of April, 1998)

PRESENT :

Shri Varghese T. Abraham, B.A., LL.M., Presiding Officer

Industrial Dispute No. 54 of 1997 (C)

BETWEEN

The Regional Manager, Union Bank of India, Regional Office, Union Bank Bhavan, M. G. Road, Cochi-35.

AND

Shri P. D. Jose, Panikulangara House, Attupuram, P.O. Ayroor, Ernakulam.

Representation :

M|s. H. B. Shenoy Associates. Advocates, 'Vatsal' Krishnaswamy Road, Cochi-35. —For Workman

AWARD

Government of India as per Order No. L-12012|103|97|IR(B-II), dated 24-11-1997 referred the following industrial dispute for adjudication viz :

"Whether the action of the management of Union Bank of India Cochi in terminating the services of Sri P. D. Jose w.e.f. 11-8-92 without complying the provisions of Section 25F of the I.D. Act, 1947 is legal and justified ? If not, to what relief the said workman is entitled ?"

2. According to the workman, he was appointed as mini deposit collection agent as per Ext. P1 order issued by the Management at the Athani Branch. He has been working as such from 20-6-77 till 11-8-92. Subsequently he was denied employment without notice, notice pay or compensation. He was given Ext. W2 Identity Card. As per order dated 11-8-92 (Ext. W3) he was placed under suspension. This is the grievance of the workman.

3. The Management was served with registered notice, and though it received the notice it did not care to make appearance. Hence the Management is set exparte.

4. The workman is examined as WW1 and Exts. W1 to W3 are marked.

5. The points which arise for consideration are :—

(i) Whether the termination of service of the workman is illegal ?

(ii) To what relief, if any is he entitled to get ?

6. Points 1 and 2 : WW1 has sworn in support of averments in the claim. Exts. W1 and W2 will show that he was appointed as Mini Collection Agent by the Management. Though Ext. W3 suspension order was issued, there is no evidence that it is followed by a domestic enquiry on the alleged misconducts. No disciplinary action is taken against him. There was no notice, notice pay or compensation and hence termination is illegal and violative of Section 25-F of the I.D Act. When the termination is found illegal the normal rule is reinstatement. To grant back wages, there is no material to show his monthly or annual emoluments. Therefore Rs. 5000 is fixed as back wages. Points so found.

In the result, an award is passed directing the management to reinstate the workman with continuity of service and to pay Rs. 5000 (Rupees Five thousand only) as back wages.

Ernakulam,
28-4-1998

VARGHESE T. ABRAHAM, Presiding Officer

APPENDIX

Witness examined on the side of workman :

WW1. Sri P. D. Jose.

Exhibits marked on the side of workman :

Ext. W1. Photo copy of appointment order issued to P. D. Jose, by the Management dated 20-5-1977.

Ext. W2. Photo copy of Identity Card dated 24-5-1977 issued to P. D. Jose by the Management.

Ext. W3 Photo copy of suspension order dated 11-8-92 issued to P. D. Jose by the Branch Manager.

नई दिल्ली, 29 जून, 1998

का.आ. 1427.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण मे, केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध मे निर्दिष्ट औद्योगिक विवाद में लेबर कोर्ट औद्योगिक अधिकरण, अर्नाकुलम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-6-98 को प्राप्त हुआ था।

[सं. एल-35011/2/88-डी-IV(ए)/डी-III-(बी)]
बी.एम. डैविड, डैस्क अधिकारी

New Delhi, the 29th June, 1998

S.O. 1427.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publish the award of the Labour Court Industrial Tribunal, Ernakulam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Cochin Port Trust and their workman, which was received by the Central Government on 29-6-1998.

[No. L-35011/2/88-D. IV (A)/D-III-B.]
B. M. DAVID, Desk Officer.

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM

(Labour Court, Ernakulam)

(Monday, the 16th day of February, 1998)

PRESENT :

Shri Varghese T. Abraham, B.A., LL.M., Presiding Officer.

Industrial Dispute No. 15 of 1990 (C)

BETWEEN

The Cochin Port Trust, Wellingdon Island, Cochin-682003, Kerala.

AND

The General Secretary, Cochin Harbour Workers Union, Wellingdon Island, Cochin 682009, Kerala.

Representations :

M/s. Menon and Pai, Advocates, Kochi-18—for Management.

Sri K. Ramkumar, Advocate, Kalathiparambil Lane, Kochi-16—for Union.

AWARD

The Government of India as per Order No. L-35011/2/88-D.IV (A)/D.III (B) dated 22-11-1990 referred the following industrial dispute for adjudication :

"Whether the action of the management of Cochin Port Trust in denying promotion as Lascar to S/Shri M. V. Vasu, Andappan, V., Purushan, V. C., Gopi, K.G., No. I Raghavan P.K., Damodaran M. G. and Uthran T. K. casual mazdoors is justified. If not, to what relief the workman concerned are entitled ?"

2. These are the facts . The union which espoused the causes of the workmen is recognised by the Government. This union is working for the service benefits of its members who are employees of the Cochin Port Trust. There arose some regular posts of Lascars in the monthly paid in the Mooring Section of the Dredging Division of the Management during 1983 to 1986. There were casual employees in service even before the vacancies arose. They are Harbour Masters Division and Dredging Superintendent's Division. Casual employees were maintained only in the Dredging Superintendent's Division. The Cochin Port Trust Board in an earlier resolution passed have decided in continuation of the discussions with the petitioners union to regularise the existing casual employees who have put in 720 days of attendance with a period of three years. It was also decided by the Board to creat supernumerary posts in regularise such casual employees who complete the above days of work and above number of cases as and when required, pursuant to the above decision. The casual Mazdoor in the service of the Dredging Division, Mooring have been regularised from 1972 onwards on the beginning of every financial year which was considered to be the crucial date for yearly regularisation. By resorting to the above method of regularisation the Cochin Port Trust has completed the absorption of the remaining Casual Mazdoors in 1979 and thereby the number of Casual Mazdoors will be completely exhausted in the division. Thereupon the management decided to recruit new casual mazdoors from the employment exchange by observing all the required formalities. When the proposal was routed through the Chairman of the management. The was kind enough to varify the backlog of the SC/ST employees in the post of Lascars to which post hitherto Casual Mazdoors have been regularised. It was assessed that the backlog of 20 posts of lascars to be filled by regularising the casual mazdoors recruited through employment exchange in future. It was notified to the employment exchange to sponsor SC/ST candidates alone to fill up 20 posts of casual mazdoor in Mooring Section, Dredging Division. Under the above scheme 20 casual mazdoors have been selected in March 1982. The subject matter of regularisation of those casual mazdoors to the post of Lascars on attaining the required period of 720 days when there arose clear vacancies of lascars is the subject matter of the dispute. While the casual mazdoors have been continuing so, during 1983 and 1984, 13 and 7 posts of lascars have fallen vacant. It was the duty of the management to consider these Mazdoors for early regularisation by appointment against the regular posts which has become vacant. This was not considered by the management, despite repeated representations. The extreneous and irrelevant consideration were taken into account by the management. On account of series of compiaints during January 1985 the casual employees were offered the posting as monthly paid in the Chief Mechanical Engineers Department of the management as mazdoors. These postings were only to eliminate the existing casual mazdoors to another department. So as to open avenue to direct recruitment to the post of lascars, which post is placed at a higher pay scale. The duties and responsibilities were also entirely different. The casual mazdoor have been identically placed to perform all the duties of the lascar in marine department by working in the sea and back waters almost all periods. The avenue of promotion to this post in the Mechanical Department was also based on the required Trade test which the casual mazdoor in the Marine Department would not be able to come through. It was under the above circumstances 7 casual mazdoors in service in 1985 who were due for regularisation as lascars did not give their consent to go and work in the mechanical department. Two posts in the available vacancies, the casual mazdoors were not required to complete 720 days of attendance. They were eligible to be regularised according to the availability of vacancies earlier than putting 720 days of attendance. Management instead of regularising the casual mazdoors against the post of lascars in the grade of Rs. 575—806 created supernumerary post of Mazdoors in the lower grade of Rs. 550—726. This has been done only to deny the genuine right of the casual mazdoors. Representation submitted by the union were turned down. The strike notice was issued. So the Assistant Labour Commissioner (Central) conducted a conciliation. Later on his failure report, the petitioner further followed up the matter with the Central Government for referring the matter for adjudication. That was not successful. So the union moved the Hon'ble High Court which directed the Government to dispose off the representation. Subsequently the case has been referred to this Court. The claim of the workmen is that 7 casual mazdoors who have been recruited to service after observing all the recruitment formalities through the employment exchange against backlog vacancies of the post of lascar in the grade of Rs. 575—806 are eligible to be regularised against the regular vacancies of lascar. Instead of posting the above Mazdoors in the vacant posts of lascar the new supernumerary post of mazdoors are created in the lower grade which has caused pecuniary loss as well as reduction in the rank of the workmen. The following casual mazdoors were recruited during March 1982.

1. M. V. Vasu,
2. V. Andappan,
3. V. C. Purushan,
4. K. G. Gopi,
5. P. K. Raghavan,
6. M. G. Damodaran,
7. T. K. Utharan.

3. The recruitment rules to the post of lascars not including the casual mazdoors in the feeder category was framed by the Cochin Port Trust Board only on 26-4-1983. In many other departments/sections, where casual mazdoors were available, were included in the feeder category to a higher post with a special note that those casual employees will also be eligible for promotion. This was not done while framing recruitment rules to the post of lascars and hence the mazdoors were made ineligible for promotion as lascars. The recruitment rules are not yet notified in the Gazette of India. For the last 3 decades or more there are casual mazdoors in service in the Mooring Section. The lowest monthly paid category of employees in the mooring section is lascar and whenever there are vacancies of lascars, the casual mazdoors were used to be promoted as lascars. All the casual mazdoors in the Mooring section have thus been promoted as monthly paid lascars by the end of 1979.

4. The casual mazdoors are doing the same work of lascars. It was only a routine affairs to regularise these casual mazdoors in question belonging to the Mooring secton as monthly paid mazdoors in the same section. The names referred to in para 12 of the statement to engage the Mooring section are regularised as Lascars on a monthly payment in the same section. The present workmen would have been appointed monthly paid lascars in the Mooring section. While framing recruitment rules to the post of lascars no consideration was given to the casual mazdoors for which they were eligible as per the practice followed till the framing of the recruitment rules. The management deliberately avoided these, casual mazdoors including in the feeder category of lascars post. These casual mazdoors belonged to SC/ST and the management wanted to avoid them. The 7 casual mazdoors happened to be in one particular section i.e. Mooring section because there were backlogs of non-filling up of reservation quota of SC/ST candidates in the Dredging Division. Then the Chairman directed to filling up of the quota. He instructed to allot the reservation to the posts of lascars and to recruit 20 casual mazdoors against it to be promoted subsequently as lascars. Therefore 20 casual mazdoors were recruited from SC/ST as per the Government directions and the management filled up the backlog with these casual mazdoors but the management drove some of them away from the particular section to other sections making them scattered in different departments. Thus foul-play was done with another intention to make further fresh outside recruitments of lascars to the Mooring section under the shield of the newly made recruitment rules. The number of vacancies filled up by outside recruitment from 1983 to 1986 as stated in para 18 of the statement. Manifest injustice has been done to the workers by denial of their rights to be regularised as lascars. The union prays for the following reliefs :—

(i) Declare that the seven Scheduled Caste/Scheduled Tribes casual mazdoors, recruited in 1982 in the Mooring Section/Dredging Division, Cochin Port Trust against the backlog vacancies for lascars to be filled up by scheduled caste/scheduled tribes candidates are eligible to be regularised as lascars against the subsequent vacancies in that Division before that ;

(ii) Declare that the creation of the Supernumerary post of mazdoors in the lower grade of Rs. 550-726 in the Mooring Section/Dredging Division, Cochin Port Trust for regularisation of the seven casual mazdoors as against the claim of the mazdoors to regularise them in the vacant post of lascars n the grade of Rs 575--806 is illegal ;

(iii) To direct the opposite party to regularise the seven casual mazdoors as lascars in the grade of 575-806 against the immediate vacancies of lascars in the Mooring Section/Dredging Division. Cochin Port Trust after the recruitment of the casual mazdoors in 1982 and to grant all consequential benefits on such regularisation ;

(iv) To declare that the seven casual mazdoors so regularised are seniors to the lascars/directly recruited in Dredging Division and

(v) To declare that the monthly paid mazdoors in the Mooring section/Dredging Division are doing identical duties with that of the lascars in the Mooring Section, Dredging Division and therefore eligible for the same scale of pay of a lascar."

5. The defence contention of the management are capsulated as follows.—The recruitment, seniority, promotion etc. of its employees of the management are governed by the Coching Port Employees (Recruitment, Seniority and Promotion) Regulations, 1964 as amended from time to time. According to Regulation No 7 of the filling up vacancies by direct recruitment and promotion and the age limit, educational qualification and experience for direct recruitments in respect of the various grades or posts are laid down by the Board. Recruitment and promotion are purely managerial and the same cannot be the subject matter of an industrial dispute and hence the issues referred for adjudication is not a valid industrial dispute and incapable for adiudication.

6. In 1982 the management recruited 13 and 7 Scheduled Caste, Scheduled Tribe as casual mazdoors in the Marine Department from the list of candidates sponsored by the employment exchange along with the candidates sponsored by Central Agency of Cochin Port after observing all the formalities including provisions mentioned above. Normally the casual employees recruited will be regularised against supernumerary posts which will be permanent post after attaining 720 days of attendance within 3 years. However, these casual mazdoors can have also every rights to apply for any regular or direct recruitment post. Whenever the casual mazdoors are included in the feeder category even at the time they are working as casuals if all other conditions like age limit, academic qualifications etc. are fulfilled. Out of 20 casual mazdoors appointed, 13 persons were appointed against regular post in some other departments even before attaining 720 days of attendance within three years. The remaining 7 mazdoors whose cases are referred for adjudication were offered to permanent appointments in the Civil/Mechanical Engineering Department as there was no permanent post of mazdoors in the Marine Department. But they did not accept the offer and their unwillingness was conveyed to the Management in writing. As a matter of right the 7 persons under reference cannot claim promotion as lascar. They were offered the permanent posts on regulations. According to the existing regulations the minimum qualification for the post of lascar is pass in 8th standard and good physique with knowledge of swimming. The feeder category to the promotion post of lascar is Topaz and Baundary in the scale of Rs. 330-475 and Boy Cook in the scale of Rs. 350—524. None of the above 7 workers had required qualifications for appointment as lascars. So they cannot be considered for promotion. Later promotion was offered to them which they refused to accept. As per the direction of the chairman, 20 casual mazdoors were recruited and appointed to attend to the unskilled work in the Dredging Division during the year 1982. According to the directive of Central Government casual employees recruited will have to be regularised on completion of 720 days of attendance within a period of three years. Normally, for regularising casual mazdoors who have completed 720 days of attendance within the above period will take time for regularisation as the department will have to observe certain formalities like roster points, approval of departmental promotion committee etc. Hence on completion of 720 days of attendance with 3 years, the casuals are normally be appointed against the supernumerary posts which will be regularised against the permanent posts. The post of lascar in the Marrine department was a direct recruitment post prior to the existing recruitment rules. Subsequently the post of lascar became the promotion post of Topaz, Baundary, Cook in order to give promotional opportunity to these employees who were in the lower category. The academic qualification has also been revised to 8th standard as per Resolution No. 21 dated 26-4-1983. Out of the 20 mazdoors appointed. 13 employees were appointed against regular posts in some other departments even before attaining 720 days of attendance. As there were no permanent posts of mazdoors in the Marine department, they were offered appointments in other departments so as to allow their legitimate rights. They have given their unwillingness and the department has not accept ed it. Extraneous and irrelevant considerations as stated in the claim are baseless and incorrect. The 7 casual mazdoors under reference cannot claim the post of lascare in the grade of Rs. 575-806. According to the Regulations, 1964 their cases could be considered only to the supernumerary posts created in the grade of Rs. 550-726. As soon as the 7 employees completed 720 days of attendance within a period of 3 years, they were appointed in the Marine Department against supernumerary posts as regular posts or mazdoors were not there in the Marine department. This was done because they were reluctant to accept regular posts of mazdoors in the Civil/Mechanical Engineering Department offerred to them as lascar is a feeder category of Topaz, baundaries and cook, they will not become eligible for the post by promotion. There is no merit or substance in the claim. As per the Regulations, it is a managerial prerogative to fix the age limit, educational qualifications and experience for recruitment and departmental promotions. The management duly notified and brought to the notice of the mazdoors or their unions. A worker who is to be appointment as lascar is required to have some experience in certain particular category and hence the casual mazdoor could not be considered for the post of lascars. The recruitment rules were amended to get chance for promotion to

the lower categories such as Topaz, Bundaries, Boy Cook. There is no necessity of bringing casual mazdoors in the feeder category of lascars, in the last grades. The Chairman has directed the Department to examine by the recruitment could be restricted to those posts to the Scheduled Caste/Scheduled Tribe. As these were unskilled posts it was possible to recruit the mazdoors from Scheduled Caste/Scheduled Tribe and accordingly 20 mazdoors were appointed. The union of the 7 workers whose names are mentioned in the reference order are not entitled to any of the reliefs. 7 persons are not entitled to be lascars by way of promotion. They have no required qualification so it is prayed for dismissal of the claim statements.

5. Rejoinder is filed by the union refuting the contentions in the written statement and reiterating the averments in the claim statements.

6. Evidence in this case consists of the testimony of MW1 and Exts. M1 to M6 on the part of the management, WWs. 1 to 3 and Exts. Ws. 1 and 2 on the side of workmen.

7. Heard both sides.

8. Points which emerge for consideration are :

(i) Whether the 7 casual mazdoors were denied promotion as lascars ?

(ii) Are these workers entitled to promotion as lascars are relieved and sought the claim statement allowable and if so to what extent ?

9. Point Nos. 1 and 2.—The issue referred is denial of promotion to 7 workers involved in this case. The relief portion as extracted above when read along with the written statement as a whole in its entirety will reveal with what the union requires are entirely different. Moreover, the testimony of WW-1 has to be taken into consideration. In cross examination WW-1 the joint secretary of the union which represented by workman says "1982—or 20 union which was represented by workman says, "1982—or *il* 20 Casual Mazdoor *ne niyamichathu* vacancy *chittappetuthi* Employment Exchange *nalkiya* list *anusarichaanu. Ee* 20 *perum* S.C./S.T. *vibhagathilppettavaranu*". Lower down he says "1982-*il evarotappam etutha* 20 *peril* 13 *per mattu* Department-*il*-monthly paid mazdoor *aayi joli cheyyunnundu.*" It is also admitted by WW-1 that the present workers 7 in Nos. were offered the post of permanent mazdoor in mechanical section. It is also stated by him that on 26-4-1983 as per the resolution of the Board the post of lascar is made as a promotion post. As per the resolution of 1993 Topaz, boy Cook and boundary will come under the feeder category for the appointment of lascar post. It is admitted by him that it is correct to say that Topaz, Boy Cook etc. are included in the feeder category to the post of lascar in order to give them promotion. It is also admitted by him that in 1989 the recruitment rules are amended so that the lascar post has become a promotion post. Yet another reason to discard the claim of the workmen is that WW-1 admitted that he was not an official of the union at present. WW-2 is the workmen by name Andappan. He also admits that 20 persons were employed in 1982 and out of those 20 persons 13 persons were regularised in several departments and that the present 7 workers were given offer for mazdoor post just like 13 other persons. The management cannot be blamed for having not accepted the offer by the workers. The justification for refusal given by WW-2 is that it was decided to post 7 persons as Mazdoors in work shop where they have no experience and that explanation is liable to be rejected since experience is something to be gained by gradual stages. They were offered the post of lascars just like 13 other persons and these 7 workers did not accept the post. So the conduct of the management cannot be held as blameworthy. WW-3 is the retired worker who joined the post in 1971 as casual mazdoor. He was promoted as lascar in 1977 and his post was regularised. He was retired on 1994. So the evidence on record will show that the workers were given the offer, which they did not accept, the post of mazdoor Ext. M-1 is a copy of the resolution of the Chairman of the Board dated 26-2-1993. It is stated Ext. W-1 as follows :

> "As the educational qualification for the post of Lascar is a pass in VIIIth standard, 14 employees belonging to the feeder categories of Topaz, Bundary and Boy Cook are stagnating without promotion as they do not possess the above qualification. This situation has arisen on account of the fact that for appointment to the posts of Bundary, Topaz and Boy Cook in the feeder category no educational qualifications are required as such whereas for promotion as lascar they have to have minimum VIIIth standard qualification. Chairman proposed that to meet the long pending demand of these 14 underqualified employees for promotion, perhaps they may be absorbed as lascars purely as a one time measure without insisting on the educational qualification to the post of lascar. The question of prescribing adequate educational qualification to the post of Topaz and Bundary in order to avoid such situation in future will be examined separately."

Ext. W-2 is another decision of the Board taken on 29-9 1993 clause No. 2 says :—

> "According to Recruitment Rules as approved vide Board's Resolution No. 203 dated 12-9-1967 and as amended vide Reso. No 21 dated 26-4-1993, the post of lascar is to be filled up by promotion from among Topaz and Bundary, Boy Cook will also be considered, if willing. If none is available, the post is to be filled up by direct recruitment. The qualification prescribed for the post is "Pass in VIII standard and good physique with knowledge of swimming". Qualification of VIII standard will apply only to those who entered in Port Service on or after 31-3-1983."

According to MW-1 the present workers were working from March, 1982 onwards and they were made permanent as Mazdoor on 1-4-1985. It is settled law of interpretation that amendment of substantial provision will act only perspectively. Thus taking into account the evidence on record the inescapable conclusion is that out of the 20 mazdoor all of them were offered the post of lascar and out of them 13 accepted and the present 7 workers declined to accept.

10. MW-1 is the Executive Chief Accountant under the management. He says that in the year 1982, 20 casual mazdoor were selected and if the casual employees work for 720 days within 3 years of service they will be regularised. The workers who are involved in this case have not completed 720 days and they were regularised and posted in various departments. He says further that the present 7 workers were also referred regularisation but they did not accept it. They insisted lascar post in the marine department. At that time they were not qualified for lascar post for marine department. The rule was amended in 1983. Subsequent to the amendment lascar post was created into a promotion post Thus as per the amendment the present 7 workers were not qualified. They are posted in the marine department by creating supernumerary post by absorbing as mazdoor. Thus the evidence of MW-1 will also demolish the case of workmen. Therefore they cannot complain that they were denied promotion. Suffice to say the workers under the order of reference are not entitled to get any relief and that there is no denial of promotion as alleged by them. But the management is directed to promote them as lascars in case they accept the offer as done by 13 other employees Points so found.

In the result, the reference is answered holding that the seven workers under the order of reference are not entitled to get any relief under industrial law and that therefore there is no denial of promotion as alleged by them.

Ernakulam :

16-2-1998

VARGHESE T. ABRAHAM, Presiding Officer.

APPENDIX

Witness examined on the side of Management :

MW-1. Smt. P. K. Lakshmikutty.

Witnesses examined on the side of Workmen :

WW-1. Sri. P. C. Varghese.

WW-2. Sri. Andappan, S/o. Vasu.

WW-3. Sri. T. L. Joseph.

Exhibits marked on the side of Management :

Ext. M-1 series : 12 Attendance Register for the year 1984.

Ext M-2 series . 12 Attendance Registers for the year 1985.

Ext. M-3. Log Book register of Sri M. V. Joseph dt. 7-8-1990.

Ext. M-4. Over time Diary of Marine section, dated 15-5-1987.

Ext. M-5. Over time diary from 3-6-1987 to 6-6-1987.

Ext. M-6. Log Book dated 11-11-1986.

Exhibits marked on the side of Union :

Ext W-1. Resolution No. 456 of the management dt. 26-2-1993.

Ext. W-2. Resolution No. 220/with agenda item No. C-12 dated 29-9-1993.

Sd./-
Presiding Officer

नई दिल्ली, 29 जून, 1998

का.आ. 1428—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. कामत एण्ड डी. अबरोय मै मीसकैन मीरतीस (केरला) एण्ड मै. कैप्ट कृष्णन एण्ड को. मैशीन सैखरीस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद मे लेबर कोर्ट औद्योगिक अधिकरण, अर्नाकुलम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-6-98 को प्राप्त हुआ था।

[सं. एल-35011/2/93-आई.आर. (विविध)]
बी. एम. डैविड, डैस्क अधिकारी

New Delhi, the 29th June, 1998

S.O. 1428.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court Industrial Tribunal, Ernakulam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M|s. Kamath & D. Abrao, M|s. Seascan Services (Kerala) and M|s. Capt. Krishnan and Co. Marine Surveyors and their workman, which was received by the Central Government on the 29-6-98

[No. L-35011|2|93-IR (Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, ERNAKULAM
(Labour Court, Ernakulam)

(Monday, the 16th day of March, 1998)

Present :

Shri Varghese T. Abraham, B.A., LL.M., Presiding Officer.

Industrial Dispute No. 11|94(C)

BETWEEN

1. M|s. Kamath & D'Abrao, Ancheril Buildings W|Island, Cochin-3. (2) M|s. Seascan Services (Kerala) Marine & Technical Surveyors, Willington Island, Cochin-682 003. (3) M|s. Capt. Krishnan & Co. Willington Island, Kochi-682 003

AND

The Joint Secretary, Cochin Thurumugha Thozi hilali Union, Willington Island, Cochin-682 002.

Representations :

Sri John Mathai, Advocate,
M|s. Menon & Pai,
Kochi-18. .. For Managements
M|s. P. F. ..Thomas & Sunil Thomas,
Advocate, Kochi-12. . For Union

AWARD

The Government of India as per Order No. L-35011|2|93-IR (Misc.) dated 26-9-96 referred the following industrial dispute for adjudication :

"Whether the managements of M|s. Kamath and D'Abrao, M|s. Seascan Services (Kerala) and M|s. Capt. Krishnan and Co. Marine Surveyors are justified is not agreeing to the demand of Cochin Thurumugha Thozhilali Union to pay V.D.A. @ Rs. 2|- per point w.e.f. 1-1-1989 ? If not, to what relief the 20 Survey Tally Clerks are entitled to?"

2. Dispute is settled out of Court between the Management and Union (vide settlement recorded). No dispute exists between the Management and the Union.

In the result, reference is answered holding that no industrial dispute exists for adjudication :

Pronounced in open court on this the 16th day of March, 1998.

Ernakulam

VARGHESE T. ABRAHAM, Presiding Officer

नई दिल्ली, 2 जुलाई, 1998

का.आ. 1429—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल वेयर हाउसिंग कार्पोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-98 को प्राप्त हुआ था।

[सं. एल-42012/7/96-आई.आर. (विविध)]
बी.एम. डैविड, डैस्क अधिकारी

New Delhi, the 2nd July, 1998

S.O. 1429.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Central Warehousing Corporation and their workman, which was received by the Central Government on the 2-7-98.

[No. L-42012/7/96-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 28 of 1996

Parties :

Employers in relation to the management of C.W.C.

AND

Their workmen

Present :

Mr. Justice A. K. Chakravarty, Presiding Officer.

Appearance :

On behalf of Management : None.

On behalf of Workmen : None.

STATE : West Bengal INDUSTRY : Warehousing

AWARD

By Order No. L-42012/7/96-IR (Misc) dated 30-10-1996 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of C.W.C. Calcutta deducting one day wages of the workmen for staging 'Dharna' on 25-2-95 is justified ? If not, what relief the workmen are entitled to ?"

2. When the case is called out today, none appears from either side. It appears from the record that the union espousing the present case never took any step in the matter even though several opportunities were given to it. It may accordingly be presumed that the union is no longer interested in the matter and no useful purpose will be served by allowing the union any further opportunity to contest the case.

3. In the aforesaid circumstances, in the absence of any material for any decision in respect of the schedule under reference, this Tribunal has no other alternative but to pass a "No Dispute' Award.

4. A "No Dispute" Award is accordingly passed and the reference is disposed of.

This is my Award.

A. K. CHAKRAVARTY, Presiding Officer

Dated, Calcutta,

The 16th June, 1998.

नई दिल्ली, 29 जून, 1998

का.आ. 1430—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-6-98 को प्राप्त हुआ था।

[सं. एल-32012/12/92-आई आर (विविध)]

बी.एम. डैविड, डैस्क अधिकारी

New Delhi, the 29th June, 1998

S.O. 1430.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Calcutta Port Trust and their workman, which was received by the Central Government on the 29-6-98.

[No. L-32012/12/92-IR(Misc.)]

B. M DAVID Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 30 of 1993

Parties :

Employers in relation to the management of Calcutta Port Trust.

AND

Their workmen

Present :

Mr. Justice A. K. Chakravarty, Presiding Officer

Appearance :

On behalf of Management : Mr M K. Das, Senior LaLour Officer (IR).

On behalf of Workmen Mr I B. Roy Vice-President of Calcutta Port Shramik Union

STATE : West Bengal INDUSTRY Port & Dock

AWARD

By Order No. L-32012|12|92-IR (Misc) dated 14-6-1993 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Calcutta Port Trust in treating the seniority of Bhandaries who have been promoted to the post of Lascar at the required ratio 3:1 against the statutory provisions as laid down under 10(vii) of Calcutta Port Trust Employees, (other than HDC) (Recruitment, Seniority & Promotion) Regulations, 1985 is justified ? If not, to what relief they are entitled?"

2. The reference has arisen at the instance of Calcutta Port Shramik Union, 26-D Sudhir Basu Road, Calcutta-23 (in short union) in respect of seniority of the Bhandaries promoted to the post of Lascar.

3. Union's case, in short, is that 57 Lascars were appointed in the year 1964-65 and after rendering 26|27 years of service in the Mooring Master's Section of the Calcutta Port Trust, they were declared surplus till alternative appointment was provided for them. It was decided that after their engagement in the alternative employment, their seniority will be determined as per the Calcutta Port Trust (Recruitment, Seniority and Promotion) Regulations, 1985 (in short regulations of 1985) i.e. their seniority will be counted from the date of such transfer and will be juniormost in the cadre in that section. The relevant circular issued by the Director, Marine Department is dated 29th August, 1988. Services of those 57 permanent surplus Lascars were thereafter adjusted against permanent post of Lascars in the Dock Master's Section on 28th February, 1989 to 1st June, 1990 and since then they are performing duties of Lascars in the said department. The trouble arose after the management of the Calcutta Port Trust decided to create supernumerary post of Lascars for promotion of the Bhandaries to these posts of Lascars. Fixation of their seniority vis-a-vis Lascars having been decided to be at 3:1 ratio, the union has challanged that decision in this reference on the ground that supernumerary posts having been created in January, 1991 the management cannot give any retrospective effect of that order from February, 1989 and fixing of seniority of the Bhandaries on that basis as that violates the provisions of the Regulations of 1985. The protest of the union having gone unheaded, an industrial dispute was raised before the Regional Labour Commissioner (Central), Calcutta who having also failed to resolve the dispute, the matter was referred to this Tribunal for adjudication. The union also challenges the order of promotion of Bhandaries on other grounds, namely, that creation of supernumerary posts for promotion of certain Bhandaries cannot be treated as promotion as they have been performing the work of Bhandaries inspite of promotion and that the regularly appointed Lascars' position can never be at par with the Bhandaries who were holding lesser post.

4. The management of Calcutta Port Trust in its written statement has tried to defend its action by alleging that since under the Dasgupta Award 25 per cent of the vacancies of Lascars in the Marine Department are to be kept reserved for promotion from Bhandaries, the management gave them promotion against that 25 per cent quota. The management has also taken the plea that the union having made no prayer before the Tribunal that it is not entitled to any relief.

5. In its rejoinder, the union denied that the management promoted the Bhandaries for compliance of the requirement of 25 per cent quota of the Dasgupta Award and that the seniority of these employees cannot be fixed except in accordance with the provisions of the Regulations of 1985.

6. During the pendency of this reference, an application was filed by the National Union of Waterfront workmen (I) claiming that the majority of the Bhandaries who are involved in this dispute belong to that union and prayed for being a partly to the dispute but that application was rejeced as none moved it.

7. Heard the representatives of both sides.

8. It appears from the record that apart from production of certain documents by either of the paries, only one witness was examined on behalf of the union.

9. Mr. M. K. Das, representative of the management submitted that the schedule of the reference, as it is before this Tribunal, cannot be considered to be one for consideration of the position of the admittedly 57 surplus permanent Lascars who were transferred to the Dock Master's Section. It was also submitted that the union which is espousing the cause of the 57 Lascars cannot espouse the sause of the Bhandaries who owe their alligence to a different union, which filed the application for its addition as a party in this reference. The management also has challenged the reference on the ground that the names of the Bhandaries in respect of whom the relief is to be given or whose position has to be decided has not been mentioned in the reference. According to him non-mentioning of these names in respect of whom the relief is to be given makes the reference bad and makes it non-maintainable. He further submitted that the dispute having been raised by the union for protection of the seniority of the Lascars, who are their members and the reference being directed for a decision regarding management's action of granting promotion to the Bhandaries to the post of Lascar in violation of the provisions of Regulation 10(vii) of the Regulations of 1985 and also for the finding of relief to be given to these Bhandaries that the entire complexion of the dispue betwen the parties has changed and that makes the reference not maintainable.

10. To properly consider the objections raised by the representative of the management, it is necessary to go into the facts of the case to discover the real nature of the dispute between the parties. It is true that the reference as framed shall not give any indication that it was framed for the purpose

of determination of the question whether seniority of the surplus Lascars adjusted in the Dock Master's Section shall be affected or not by the promotion of Bhandaries by way of creation of supernumerary posts. The reference also does not indicate the number of the affected Lascars. However, it is an admitted position that 57 Lascars who are permanent staff were posted in the Mooring Master's Section initially but they having been found surplus in the said section, they were transferred to the Dock Master's Section in the same department in terms of the circular dated 29th August, 1988. The said circular is marked Ext. W-1. It is stated in paragraph 6 of the said circular that "following his adjustment in alternative employment, his seniority will be determined as per Calcutta Port Trust Employees' (Recruitment, Seniority and Promotion) Rgulations, 1985 i.e. his seniority will be counted from the date of such transfer and he will be the juniormost in the cadre." Though the union in its written statement laid more stress to the provisions of the Regulation 10(vii) in support of its case that the seniority of such Lascars shall remain intact, still then, that provision has no application to the facts of this case. That provision relates to inter-department transfer and that has nothing to do to the fixation of seniority of these 57 Lascars which are intra-department transfer.

11. The post of Lascar is also a promotional post from the Bhandaries. There is also no dispute in this case that the surplus Lascars were adjusted in the Dock Master's Section between 28th February, 1989 to 1st June, 1990. As per circular (Ext. W-1) their seniority is to be counted from the date of their joining to that post. As stated above, the trouble started when the management tried to accommodate these Bhandaries to the promotional post of Lascars. For that purpose 19 supernumerary posts were admittedly created in January, 1991. Representative of the management frankly conceeded that though that order was not given any retrospective effect, still then, to ensure preservation of 25 per cent quota for promotion of Bhandaries to the post of Lascar as required under Dasgupta Award that 3:1 ratio was adhered to. Such an order is palpably illegal on two grounds, namely, that the management cannot tinker with the seniority of the surplus permanent Lascars in the transferred section by issuing an order of promotion in favour of the Bhandaries subsequently and that no retrospective effect having been given to the creation of supernumerary posts that the question of placement of promoted Bhandaries in the ratio as stated cannot arise. Further, the management having assured the surplus Lascars in its circular Ext. W-1 that their seniority shall be counted from the date of their joining, it cannot by a subsequent order take away the already accrued right of the Lascars in the name of implementation of the Dasgupta Award.

12. In the backgrounds of the facts referred to above, it is necessary to consider how far the management's contention regarding the maintainability of the reference can be accepted. I have already said that the reference suffers from the defect that the names of the Bhandaries or the Lascars involved in this case are not mentioned. Secondly, the question posed in this reference is the fixation of seniority of the promoted Bhandaries to the post of Lascars at the required ratio of 3 : 1 against the statutory provision of Regulation 10(vii) of the Regulations of 1985. Both of these provisions, as stated above by me, are note clearly applicable in tht facts of this case. The words "required ratio 3:1" of the reference, possibly means Dasgupta Award. I have already stated that the question of application of that ratio does not arise at all because after the surplus Lascars' posing in the Dock Master's Section, their seniority was fixed as per that circular and the supernumerary posts having been created after the fixation of the seniority of these Lascars, the ratio 3 : 1, if it is to be applied at all, is to be applied in the case of promoted Bhandaries after that date. The schedule of the reference, therefore, does not given any clear indication as to the nature of the controversy between the parties. It further appears from the schedule that the Tribunal has been asked to adjudicate regarding the relief to be available to the Bhandaries. As a matter of fact, the Bhandaries themselves have no grievance to make in this matter as the management having already applied 3 : 1 ratio in their favour, no question of granting any relief to them can arise. Further, the written statement of the union clearly showing that the union is espousing the cause of the 57 surplus Lascars, there cannot be any question of that union again representing the case of the Bhandaries as the grievance of the surplus Lascars are against the promoted Bhandaries whose postings as per 3:1 ratio have created confusion in the matter of fixation of the seniority of the Lascars. It is the promoted Bhandaries who will be really affected in this case, but the reference itself has not made any provision for their union to be a party in this case. It is true that that union filed an application in this case at a very belated stage for being added as a party, but that application was rejected as none came to move the same.

13. Be that as it may, the reference itself being misconcieved as the real claimants of the relief sought for, namely, the 57 surplus Lascars cannot be given any relief because of the manner in which the schedule of reference is framed and because of the real nature of the controversy being not understandable from the reference and because no opportunity having been given for representation to the party who shall really be affected by any order of this Tribunal that I have no other alternative but to hold that the reference is not maintainable as framed.

14. The reference is disposed of accordingly.

This is my Award.

Sd./-

A. K. CHAKRAVARTY, Presiding Officer.

Dated : Calcutta,
The 9th June, 1998.

नई दिल्ली, 29 जून, 1998

का.आ. 1431—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन रेयर अर्थ लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोलम के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-6-98 को प्राप्त हुआ था।

[सं. एल-29012/123/94-आई.आर. (विविध)]

बी.एम. डैविड, डैस्क अधिकारी

New Delhi, the 29th June, 1998

S.O. 1431.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kallam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Rare Earths Ltd., and their workman, which was received by the Central Government on the 29-6-98.

[No. L-29012/23/94-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

In the Court of the Industrial Tribunal, Kallam
(Dated, this the 4th day of June, 1998

Present

SRI I.C.N. SASIDHARAN
INDUSTRIAL TRIBUNAL
IN
INDUSTRIAL DISPUTE NO. 14/96

Between

The General Manager, M/s. Indian Rare Earths Ltd., Mining Division, Chavara P.O., Kollam
(M/s. Menon and Pai, Advocates, Cochin)

And

Sri S. Suresh, Konnasseril House, Kallelibhagam P.O. Champakkadavu, Kollam,
(By Sri. N. Raman Pillai, Advocate, Kollam)

AWARD

The Government of India as per Order No. L-29012/123/94-IR(M) dated 8-10-1996 have made this reference to this Tribunal for adjudicating the following issue :

"Whether the action of the management of Indian Rare Earths Ltd., Mining Division, Chavara, denying employment to Sri. S. Suresh, in the cadre of Clerk-Cum-Typist is justified? If not, what directions are necessary in the matter?"

2. Sri. Suresh, the workman in this dispute, has filed a claim statement and his contentions are briefly as below : Sri. Suresh was a clerk under the Mining Transporting Contractors under the management company during 1979-81. The mines were taken over by the management w.e.f. 1-12-81 and there were 647 regular workers and 49 temporary workers under various contractors. As per the settlement entered into between the management and he union representing the workers the company absorbed 440 workers out of the 647 regular workers and 48 out of 49 temporary workers engaged by the mining contractors except this workman without any reason. During the conciliation the management was reluctant in submitting the particulars called for and the conciliation was thus prolonged. The conciliation officer has found that the workman has been engaged by the contractor as a clerk before the mines were taken over by the management. It has also been found that there has been regularisation of workers on 1-12-1981, 1-7-1985 and 17-5-1986. The name of this workman do not figure in the annexure to the aforementioned settlement though the workman has submitted the details of the workmen engaged along with him as casual workers. Without assigning any reason or justifiable cause the management company is denying the benefits of the above settlements where by workers were regularised. None of the departmentalised workers were formerly employed by the management but by the mining and transporting contractors. It is not the fault of the workman that his name was not found a place in the annexure to the settlement. This reference has been made as per the order of the High Court of Kerala since the Government of India was reluctant to refer the matter earlier. As per the settlement dated 4-6-1995 the management has agreed to regularise the casual workers to the service of the company in the cadre of Clerk-Cum-Typist and trainee worker. There is no justification for denying the benefit to the workman alone while other workers who worked along with him were regularised. The action of management is malafide, discriminatory and arbitrary. He has every right to get him absorbed and regularised w.e.f. 1-12-1981.

3. The management opposes the claim of the workman. The contentions of management are briefly as below : Sri. Suresh was never employed by the management. Since there was no employer employee relationship between the management and the workman, the question of denial of employment does not arise. Since he was not a workman of the management, the reference order itself is bad in law. Sri. Suresh raised an industrial dispute on 25-7-1990 almost after a lapse of nine years before the State Labour Commissioner which was the wrong forum. There is nothing to justify in making the reference at such a belated stage. During the year 1993 Sri. Suresh raised a dispute and the Asst. Labour Commissioner (Central) held conference and ultimately found that there is no merit in the demand. Thereafter he moved a petition before the Regional Labour Commissioner (Central) and on the basis of the report of Regional Labour Commissioner, the Government of India declined to make a reference on the ground that the workman could not produce any documen-

tary evidence to prove his claim. Thereafter the Government referred the dispute by order dated 8-10-1996 as per the direction of the High Court of Kerala. The management is not made a party in the original petition before the High Court and the management was not heard before referring the issue by the Central Government. The management was not given any opportunity by the Central Government after declining the reference earlier and before making the second reference. The present reference is violative of the principles of natural justice. There is no justification in making the reference at such a belated stage. This reference is highly belated and the claim of Sri. Suresh has become stale and incapable of adjudication. Sri. Suresh was engaged by a former contractor of the management Sri. V. V. George as his personal staff. The mining contract workers union representing the mining contract workers was persuading the management for absorbing atleast some of their workmen and the management decided to provide employment to some of them. In the presence of the Asst. Labour Commissioner (Central) a settlement dated 3-12-1981 was signed between the management and the union after several conferences. Thereafter the management absorbed eligible contract workmen whose names were mentioned in the annexure to the settlement. By way of subsequent settlement dated 23-2-1982, 17-5-1985 some other casual workmen were also taken into the rolls of the company. Since the workmen did not satisfy the eligibility, criteria mentioned in those settlements, he was not taken into the service of the company. Neither Sri. Suresh nor the unions had made any complaint in this regard. The highly belated present complaint cannot be entertained. The issue referred is not for regularisation of Sri. Suresh as claimed by the workman but the issue is denial of employment. The issue regarding regularisation of service will not come within the purview of industrial dispute and no such issue can be raised by a person even under Sec. 2-A of the Industrial Disputes Act ('the Act' for short). He was not a clerk under the mining and transporting contractors under the management. Before 1981 maining work was being done by contractors who had employed about 627 regular workers and few casual workers. Out of them 440 workers were departmentalised w.e.f. 1-12-1981. Since Sri Suresh is a casual clerk with the contractor, his name did not figure in the annexure in the settlement and he should not be absorbed The only reason for not taking him to the service is that his name did not find a place in the Form-B Register maintained under the Mines Act.

4. The further case of the management is that the management participated in the conciliation conference convened by the Asst. Labour Commissioner and available particulars were furnished. Sri. Suresh himself is responsible for the delay in raising the dispute. There was no finding by the conciliation officer that Sri. Suresh was engaged by the contractor as a clerk before the mines were taken over by the management. The workman from Sl. No. 26 to 48 shown in the list furnished by Sri. Suresh were already included in the annexure to the settlement dated 3-12-1981. Regarding the workmen from Sl. No. 1 to 25 they were working as casual labourers with the contractors from 23-2-1982 and they were absorbed w.e.f. 1-7-1985. Sri. Suresh is not entitled to the benefits of any of the settlement referred in the claim statement. His case is totally different and no similarly situated with the other contract workmen who were deparmentalised. Before finalisation of the list of workmen to be the departmentalised several conciliation conferences were convened and all the details were discussed. The eligibility criteria was formulated and the list of employees were finalised after protracted discussions. During he year 1993-94 the company engaged some casual clerks and Typists and trainees due to exigencies of circumstances and by settlement dated 4-6-1995 their services were regularised. He is not entitled to get the benefit of that settlement. There is no arbiterness, malafide or discrimination in the action of the management. Sri. Suresh is also bound by the terms of the settlement dated 3-12-1981 and he cannot raise a dispute. Since the issue referred for adjudication is covered by a valid settlement binding on him, the issue referred for adjudication is bad in law and liable to be set aside. Granting any relief claimed by the workman will amounts to setting aside the conciliation settlement and this court has no power to do the same. The reference order is totally bad in law since the issue referred is a subject matter of conciliation settlement. According to the management, the workman is not entitled to any relief in this reference.

5. The workman has filed a replication denying the case of management and reaffirming the contentions of Sri. Suresh. It is further stated that denial of employment is integrally connected with the refusal of management to regularise the services of this workman when the contract system was abolished. This tantamount to denial of employment. For all intends and purposes the issue referred for adjudication is relating to regularisation of worker by the management. He was the only worker under the contractor who was refused to be absobed by the management. Even during the contract system the management was the real and principal employer of the workers of the mines division. The work done by the workman is connected with the manufacturing process under the management. The employer employee relationship was between the workman on the one side and the management on other even during the period of contract employment. All the workmen including Sri. Suresh who were employed during the contract period of Sri. George continued to be employed in the mines division during the tenure of the subsequent contractors namely the Port Workmen's Co-operative Society. Sri Suresh was refused to be absorbed only because his name was not sponsored by any trade union. Workers junior to Sri Suresh in the mines division and whose names were not in the annexure to the agreement or in the Form-B Register were regularised and absorbed by the management simply because they were sponsored by the union. Some workers who got entry into the field as casual Clerks/Typists and trainees only in 1994 were also absorbed because of the sponsorship by the unions. Sri Suresh was not a personal clerk of contractor Sri George which is proved by his continuation of service under the mines division more than one year after the exist of Sri George and till December 1981. The

reference is perfectly in order. There was no delay or laches on the part of the workman.

6. The workman examined himself as WW1. One workman working in the management company was examined as WW2 on the side of the workman. Exts. W1 to W13 have been marked in support of his claim. The Deputy General Manager (Personnel and Administration) of the management company has given evidence as MW1. Exts. M1 and M2 have also been marked in support of the case of management.

7. The management has raised some preliminary objections particularly regarding the validity of the present references. The first one is that this reference is highly belated. According to the management the alleged denial of employment was w.e.f. 1-12-1981 but Sri Suresh has raised the dispute only in the year 1990 before the appropriate forum hence the reference is highly belated and become stale. The contention is that the workman has first raised the dispute only in the year 1989 though the alleged denial of employment was in the year 1981 and there is no evidence of raising the dispute before that. It is not proved that the workman has placed any demand to the management raising the dispute prior to 1989. No doubt the workman has produced and marked Exts. W8 certificate of posting and W11 and W12 acknowledgements in support of the contention that he has raised dispute as early in 1982 and has been following the matter. It is not disputed that the Government of India is the appropriate forum for referring the dispute. In Ext. W8 certificate of potings the names of management. District Collector and Labour Secretray, Government of Kerala are stated. The date affixed is 13-12-1984. The Deputy General Manager of the management company has categorically deposed that the management has not received any demand before 1989 from the workman. It is not proved that the workman has sent any demand regarding his employment to the management as per Ext. W8. Even assuming that he had sent a demand it is after three years of the alleged denial of employment. There is absolutely no explanation for the delay of three years Hence Ext. W8 cannot be acted upon in support of the claim of the workman for condonation of delay. Ext. W11 is a card issued from the Office of the Chief Minister of Kerala on 29-6-1982 to the workman wherein it is stated that the workman has submitted a petition for employment. Ext. W12 is also a card issued to the workman from the Office of the Labour Minister on 16-6-1982 for the very same claim. It is not known whether the petition submitted was against the management. Further the Government of Kerala is not the appropriate forum for raising the dispute and referring the same. It is evident from Ext. W11 and W12 that the workman had approached the wrong forum. In these circumstances Exts. W11 and W12 will not also come to the rescue of the workman in this regard. It is not established that the workman has raised the dispute before the appropriate forum with the knowledge of the management before 1989. Thus it is clear that there is inordinate delay of more than 8 years in raising the dispute. The reference is therefore highly belated.

8. The learned counsel for the management brought to the notice of this Tribunal some decisions of the Supreme Court and High Courts in support of the argument that the present reference has become stale and not incapable of adjudication. The first authority cited is that of the decision of the Supreme Court in Shalimar Works Ltd. Vs. its workmen [1959(2) LLJ26]. The question of delay in raising the dispute was one of the points considered in that case. There the reference was made after 4 years after re-employment of the workman. The court observed thus at page 31 :

> "It is true that there is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale, as in this case. The industry has to carry on and if for any reason there has been a wholesale discharge of workmen and closure of the industry followed by its reopening and fresh recruitment of labour, it is necessary that a dispute regarding reinstatement of a large number of workmen should be referred for adjudication within a reasonable time. We are of opinion that in this particular case the dispute was not referred for adjudication within a reasonable time as it was sent to the industrial tribunal more than four years after re-employment of most of the old workmen. We have also pointed out that it was open to the workmen themselves even individually to apply under S. 33A in this case; but neither that was done by the workmen nor was the matter referred for adjudication within a reasonable time. In these circumstances, we are of opinion that the tribunal would be justified in refusing the relief of reinstatement to avoid dislocation of the industry and that is the correct order to make."

The next decision is that of the Supreme Court of Andhra Pradesh in Vazir Sulthan Tobacco Company Vs. State of Andhra Pradesh (1964 1 LLJ 622). In that case the workman was dismissed in October 1957 and a dispute was sponsored by union after a delay of 4-1/2 years. Relying on the aforementioned Supreme Court decision the High Court of Andhra Pradesh held that inordinate delay in making the reference was both unreasonable and unjustified. The next decision is that of the High Court of Punjab and Haryana in Balwant Singh Vs. Labour Court & Others (1996 1 CLR 520). In that case the service of the petitioner was terminated in 1985 and he has raised the dispute after five years The Labour Court declined the relief on the ground of delay which was challenged before the High Court. The High Court upheld the finding of the Labour Court and made the following observation in para 5 :

> "It is true that the Act does not prescribe a period of limitation within which an aggrieved workman has to raise a demand and seek

a reference of the dispute. However, it is equally settled that the Courts help the vigilant. A person who remains 'aloof indifferent or recalcitrant' is deemed to have acquiesced. He cannot be allowed to say that he is aggrieved. He may be deemed to have waived his right to the remedy and relief by his conduct and neglect. Lapse of time and delay may the party in a situation where it may become totally inequitable, unjust and unfair to grant him any relief."

The High Court of Bombay has also considered this question in R. Ganesan V. Union of India & Others. In that case the petitioner was dismissed from service in October 1980 and he has raised a dispute in November 1987. The court in para 6, 7 and 9 held that the Government was justified in holding that there has been inordinate delay of seven years in making an application in which no satisfactory explanation is forthcoming. In para 9 it is stated that the Act does not lay down a period of limitation and this however does not mean that a dispute can be raised at any time even after an inordinate delay and the Government is bound to make a reference. It is further stated that if there is inordinate delay that can be legitimate ground to hold that there does not exist in present an industrial dispute.

In the present case as held by me above the demand has been made with the knowledge of the management the appropriate forum only in 1989 and the delay of 8 years is not at all explained. In this state of affairs the law laid down by the courts as stated above is fully applicable here and the present reference has become stale and incapable of adjudication.

9. The learned counsel for the workman would contend that this reference has been made as per the direction of the High Court of Kerala by Ext. W1 judgment and hence the question of delay cannot be considered here. The Government of India refused to refer the dispute on the ground that the workman could not produce any documentary evidence to prove his claim. The High Court in Ext. W1 judgment held that the Government cannot go into the evidence and merits at the stage of reference and directed Government to refer the dispute. Accordingly this reference has been made. The High Court has not considered the question of delay but only the refusal of Government to refer the dispute due to lack of evidence. Therefore the present argument of the learned counsel for the workman on the basis of Ext. W1 judgment is devoid of merit and this Tribunal must consider the question of delay since that point has been raised by the management. The above argument therefore fails.

10. The next objection is that this reference order is bad in law as Sri. Suresh was not a workman of the management and he is not entitled to raise any valid industrial dispute against the management under the Act. On behalf of the management it was contended that Sri. Suresh was never under the employment of management but he is seeking employment here. Hence he cannot claim such a relief. Admittedly the workman was employed by two contractors under the management. He has no case that he was an employee of the management directly. It is true that according to the learned counsel for the workman the workman was employed in the manufacturing process and even if he was working under the contractor the management company was the principal employer for all purposes. But even according to the workman he was only a contract employee. It is true that he had worked under the subsequent contractor also according to him. But he cannot claim the status on an employee under the management. So long as he was not an employee of the management he cannot claim the employment under the management.

11. The above view is supported by two decisions of the High Court of Kerala as pointed out by the learned counsel for the management. The High Court in M|s. Cominco Binani Zinc Ltd. V. T. P. Pappachan and Others (1989 I KLJ 40) has considered the claim for bonus by workers engaged by contractor running a canteen provided by the management. The question arose as to whether the workers can be termed as employees of the management so as to sustain the claim for bonus. The court in para. 5 of the judgment held thus :

"The mere fact that the petitioner had the responsibility to provide and maintain a canteen u/s. 46 of the Factories Act, cannot make them the ultimate employer of the workers engaged in the canteen for all purpose. Canteen may be run by the company itself in discharge of the obligation u|s. 46 of the Factories Act. In the first two categories the workers in the canteen can not be considered to be the employees of the management. When the management entrusts the responsibility of running the canteen with a contractor the workman employed and paid by such contractor cannot be treated as workmen of the management. There is no employer-employee relationship between the management and such workman. All claims of the workmen are to be met by the contractor or the society as the case may be. If the canteen is run by the contractor or co-operative society the employer in relation to the workers engaged in the canteen will be the contractor or the society."

The High Court of Kerala in K. K. Thilakan V. Fertilizers and Chemicals Travancore Ltd. (Vol. 79 FJR 269) has considered the validity of a reference made under the Act. In that case the petitioners were workmen employed by a contractor in connection with the manufacturing process of the first respondent concern were denied employment by the contractor. The workmen raised an industrial dispute regarding their absorption in the establishment. The Labour Court directed the company to reinstate the workmen and the matter came before the High Court. The High Court after referring the above decision has held thus at page 271 :

"The issue referred to the Labour Court for adjudication is absorption of the contract workers engaged in the bagging of superphosphate in the FACT Ltd., Udyogamandal Division, by the said management who were rendered unemployed with effect from 23rd March, 1980, on expiry of the contract entered into between the management and Pigee Agencies, Cochin.' From this issue it is evident that the petitioner were the employees under the contractor, Pigee Agencies, Employees under the Pigee Agencies lost their employment on account of the termination of their contract. Consequently the workers seek absorption in the service of the first respondent. Absorption can only be of persons who are outside the establishment. A person who was outside the establishment when he seeks absorption as an employee he is in fact seeking employment in the establishment. If there arises a dispute regarding his absorption can it give rise to an industrial dispute as defined under the Industrial Disputes Act ? A workman should be employed by an employer. Only on an employment being given to him, can he be considered as a workman Petitioners have no case that they were employed by the first respondent. They were employed by Pigee Agencies, a contractor under first respondent. When the contract came to an end they became unemployed. They seek absorption in service under the first respondent. They want to be taken into the service of the first respondent. In other words they are seeking employment under the first respondent. Petitioners who were never employed or engaged by the factory want themselves to be taken into its service. Unless they are so absorbed they cannot consider the first respondent as their employer. Nor can they be treated as workmen of the first respondent either. Their claim to the employment of the first respondent can never be considered as an industrial dispute. Their claim is not an industrial dispute as defined in Sec. 2(k) of the Industrial Disputes Act'.

The Court after referring the decision in Cominco Binani Zinc Ltd (supra), a Division Bench decision in Writ Appeal No. 232/88 and also a decision of the Supreme Court in Workmen of the Food Corporation of India V. Food Corporation of India (1985 66 FJR 453)(SC) has held that the petitioners in that case were never the workmen of the management company and they were only seeking employment under the management. The court has further observed thus at page 273 :

"Under Sec. 10 of the Industrial Disputes Act where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may refer the dispute to a Labour Court for adjudication. So the power under section 10 can be exercised by the Government only when there exists an industrial dispute. Industrial dispute as defined in sec 2(k) of the Act cannot exist between an employer and persons seeking employment under them. The very dispute that was referred was the issue regarding absorption in the service of the petitioners were never workmen under the first respondent. As I have held earlier first respondent. So, there could not have been an industrial dispute between the petitioners on the one hand and the first respondent. Consequently, there was no dispute as defined in sec 2(k) of the Industrial Disputes Act for the Government to refer to the Labour Court. The jurisdiction of the Labour Court to entertain the dispute was challenged by the first respondent in the statement filed before it. It is trite law that the validity of the reference can be gone into by this Court even after the award is passed. In Shambu Nath V. Bank of Baroda. (1978 52 FJR 159) their Lordships observed (at page 162)"

"No doubt it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award."

The said observation applies on all fours to the facts before me. Since the petitioners were at no point of time employees of the first respondent, there was no possibility of any industrial dispute arising between them. Consequently there could not have been any reference of any industrial dispute for adjudication by the Labour. The reference to the Labour Court was ill-conceived."

The facts involved in the case before me are exactly similar to the facts of the aforementioned case. In the light of the above pronouncements in the above decisions I have no hesitation to hold that the reference is bad in law as no industrial dispute can exist between the workman and the management company.

12. The 3rd objection is that the issue referred for adjudication is covered by a valid settlement. Ext. M1 binding on Sri Suresh also and hence the issue is bad in law and liable to be set aside. The case of the workman is that the management has employed 647 regular workers and 49 temporary workers under various contractors engaged in the mining and transportation under the management company and the workman was one among the 49 temporary workers. It is also his case that as per a settlement entered into between the management and the union representing the workers the company has absorbed 440 workers out of the 647 regular workers and 48 out of the 49 temporary workers except him and he was not absorbed merely because his name was not sponsored by any union. It is not disputed that Ext. M1 settlement mentioned above was entered into between the parties in the presence of the conciliation officer on 3-2-1981. Ext. M1 is being a conciliation settlement is binding on all the labours working in the establishment even though they may not be members of the union which have entered into the settlement. According to the management the management has implemented the

same by absorbing the eligible contract workers whose names were included in the annexure to the settlement. The workman was not absorbed because his name was not included in the annexure. The case of management is that Sri Suresh is also bound by the terms of Ext. M1 settlement and he cannot raise a dispute. The contract workmen were absorbed as per Ext. M1 settlement which was the result of a conciliation. The present relief claimed by the workman is for absorption in the company which if allowed will amount to setting aside the conciliation settlement because the question of absorption was already settled as per Ext. M1 through conciliation. The issue now referred for adjudication is a subject matter of Ext. M1 conciliation settlement and therefore the reference order is totally bad in law.

13. It is true that Sri Suresh is not a party to Ext. M1 settlement. But he has no case that there was no such settlement. It has come out in evidence through MW1 that Ext. M1 settlement was signed after several conciliation conferences between the unions and management. The dispute covered by Ext. M1 is departmentalisation of contract workers and the unions have agreed that no further dispute will be raised regarding that issue. It is not proved that there is anything unreasonable or unfair in the terms of Ext. M1 settlement. The present claim of the workman is absorption in the company contending that he was denied employment while others worked along with him as contract workers were departmentalised. Therefore Ext. M1 is binding on him even though he was not a party to that settlement.

14. The above view is supported by the following decisions. The High Court of Kerala has considered a similar question in Burmahshell Workers Union V. State of Kerala & Others (1960 1 LLJ 323) There, the dispute was raised by the union and subject matter was already covered by a settlement. The court held that while the union represented the concerned workmen in the settlement with the employer and the dispute in question was the dispute covered by the said settlement and when such a settlement was inforce at the time of the order of reference there was industrial dispute to be referred for adjudication. The Supreme Court Collieries V. Their Employees (1967 I LLJ 714) has considered in the decision in workmen of Kankanee & Amlabad such a question. In that case one company was taken over by another company. At the time of take over a dispute arose between the workmen and new owners about the terms and conditions of service and service rules which were to apply to the workmen of the two companies. An agreement was signed finally between the parties and after that no notice was served by either party terminating the settlement. While so the company retired five workmen in one of the companies on the ground that they attained the age of 55 which was the age of superannuation as per the rules. The workmen raised a dispute. The apex court finally held that the workmen having themselves acquiesced into the applicability of these rules under the agreement there was no bar to applying the rules even to the workmen who were earlier in service and taken over by the other company. In Blue Star Ltd. V. K. S. Khurana (1993 1 LLN 362) the High Court of Delhi has considered the binding nature of a settlement entered into between the management and employees union. There a dispute was raised while the settlement was in force. The Court in para 19 and 20 pointed out that the Labour Court is bound to make an award in terms of the settlement. In para 24 it was held that if a document is a settlement in terms of secs 2(p) and 18(1) of the Act it will remain binding on all parties who are parties to that settlement. In para 32 the court has held that Labour Court cannot continue proceedings after settlement between the parties and once settlement is reached between the parties and this fact is brought before the Labour Court it is expected to respect the will of the parties and it cannot go into any question covered by the settlement except for a special reason for that would amount to reopening the settlement or undoing what had already been achieved by the parties.

15. The Supreme Court has considered this question in KCF Ltd. V. Presiding Officer (Vol 89 FJR 632). In that case about 500 workmen in the Engineering unit of the company went on strike that resulted in a lockout. Disciplinary action was taken against 29 workmen and they were dismissed. The recognised union and representative union of all the workmen in the establishment raised a dispute. Pending reference of the dispute a settlement was arrived at between the union representing 29 workmen and the management. Out of 29, 17 accepted the settlement and joined service. The remaining 12 claimed that they had not agreed to the settlement. The matter finally came before the Supreme Court. The apex court made the following observations at pages 641 and 642 :

> "It has to be kept in view that under the scheme of labour legislations like the Act in the present case, collective bargaining and the principle of industrial democracy permeate the relations between the management on the one hand and the union which resorts to collective bargaining on behalf of its member-workmen with the management on the other. Such a collective bargaining which may result in just and fair settlement would always be beneficial to the management as well as to the body of workmen and society at large as there would be industrial peace and tranquility pursuant to such settlement and which would avoid unnecessary social strife and tribulation on the one hand and promote industrial and commercial development on the other hand. Keeping in view the aforesaid salient features of the Act the settlement which is sought to be impugned has to be scanned and scrutinised. Settlement of labour disputes by direct negotiation and collective bargaining is always to be preferred for it is the best guarantee of industrial peace which is the aim of all legislations for settlement of labour disputes. In order to bring about such a settlement more easily and to make it more workable and effective it may not be always possible or necessary that such a settlement is arrived at in the course of conciliation proceedings which may be the first step towards resolving the indus-

trial dispute which may be lingering between the employers and their workmen represented by their unions but even if at that stage such settlement does not take place and the industrial dispute gets referred for adjudication, even pending such disputes, the parties can arrive at amicable settlement which may be binding on the parties to the settlement unlike settlement arrived at during conciliation proceedings which may be binding not only on the parties to the settlement but even on the entire labour force working in the concerned organisation even though they may not be members of the union which might have entered into settlement during conciliation proceedings."

The High Court of Kerala in Premier Tyres Ltd. V. Premier Tyres Workers Association (Vol. 84 FJR 54) has also considered the binding nature of a settlement during the course of conciliation proceedings The court has pointed out thus at page 57, 58, 59 and 60 :

"Whenever a settlement is reached during the course of conciliation proceedings with a recognised majority union it would be binding on all workmen including those of the dissenting unions. The dominant principle is that settlements reached between the management and the trade union with the assistance of the conciliation officer should not be allowed to be diluted at a later stage. If great sanctity is not attached to the settlement between the management and the union and if it is allowed to be meddled with from stage to stage, the result would be anarchy and disaster in the industrial arena. Whenever a settlement is arrived at between the management and the majority union, the assumption is that it is fair and reasonable. Such settlement is placed on a par with an award by an adjudicatory authority. When a settlement is accepted by the trade unions representing the majority of the workers and when it is found generally beneficial to them, challenge to the same latter cannot be countenanced."

"The object of the settlement through conciliation proceedings is to uphold its sanctity and to discourage any individual employee or a minority union from torpedoing it. There is always an underlying assumption that the settlement reached with the help of the conciliation officer is fair and reasonable. As it would be binding not only on the workmen belonging to the union which is signatory to the settlement but also others, the settlements (exhibits W-4 and W-5) will have to be sustained as against the belated on slaught against it."

"How a settlement should be interpreted has been considered in Herbertsons Ltd. V. Their Workmen. (1979 54 FJR 249 SC). Where a recognised union has negotiated with the employer and arrived at a settlement individual workers cannot challenge it on the ground that its implementation would be detrimental to their interests. It is not necessary that each individual worker is made aware of the implications of the settlement in a case where the recognised union and the management agreed to a settlement. Presumption is that the legitimate interests of the workers are well protected by the trade union and the settlement is in the best interest of the workers."

"At any rate, when a recognised union has entered into a settlement through negotiations and conciliation, an individual worker or a group of workers who are affected thereby cannot challenge it especially when the settlement as a whole is found advantageous and beneficial to the majority of the workers."

16. The workman in his claim statement para 1 has stated that the issue referred for adjudication is regularisation of the claimant to the service of the management company. In the replication filed by him para 1 there is improvement of the issue. It is stated therein that the denial of employment is integrally connected with the refusal of the management to regularise the service of this workman when the contract system in the mines division was abolished in 1981 all the other workers under the contractor were absorbed into the service of the opposite party. Further statement is that for all intends and purposes the issue referred for adjudication is the dispute relating to regularisation of this worker by the management in the circumstances of this case and refusal to regularise the service of the workman tantamounts to denial of his employment by the management. The issue referred for adjudication is denial of employment only. Regularisation of service is a prerogative of the management and issue regarding regularisation will not come within the purview of industrial dispute and no issue can be raised by a person even under Sec. 2(A) of the Act. As stated above even according to the workman he was a contract worker. Hence he cannot claim regularisation in the management company.

17. The question regarding regularisation was considered by the High Court of Allahabad in Zakkir Hussain V. Engineer-in-Chief, Irrigation Department and Others (1994 1 LLJ 5) in para 7 of the judgment it was held that regularisation cannot be made as a "rule of thumb" merely on the basis of completion of certain years of service by an employee. Further held that it depends on various facts some of which have been mentioned above it is for the employer to decide as to whether, in view of the facts and circumstances of the case, the service of the employees who were appointed on ad hoc daily wage basis would be regularised. The Supreme Court in Arundhati Ajith Parsonkar V. State of Maharashtra and Another (1994 (2) CLR 1113) has considered the question of regularisation of a Dental Surgeon who was appointed temporarily against a permanent post and had worked for nine years without break. The claim of the petitioner was rejected by the Tribunal and the matter finally came before the apex court and the court has upheld the findings of the Tribunal and pointed out as below at para 7 :—

"Nor the claim of the appellant, that she having worked as Lecturer without break for nine years on the date the advertisement was issued she should be deemed to have been regularised appears to be well founded. Eligibility and continuous working for howsoever

long period should not be permitted to over-reach the law. Requirement of rules of selection through Commission cannot be substituted by humane considerations. Law must take its course. Consequently the appellant was not entitled to claim that she should have been deemed to have been regularised as she had been working without break for nine years."

The High Court of Allahabad in Aravind Kumar V. Deputy Director (1995 1 LLJ 750) has considered a similar case of regularisation. Typist was appointed for fixed term of 30 days and the term extended from time to time for 16 months for completing excess work. After completion of the excess work his services were dispensed with on the ground that it was no more required. There arose a claim for regularisation. In para 3 of the judgment the court has pointed out that it is a term appointment which had come to an end by efflux of time. Further when an appointment is made for any period it comes to an end by efflux of time and the person holding such post is not entitled to regularisation of his service. In para 4 it was pointed out that it is settled that the service of an employee cannot be regularised merely on the ground that he has completed 240 days in service. The High Court of Calcutta has considered the question of regularisation/absorption of daily labourers on casual basis in P. P. Ghosh and Others V. Director of Fisheries, West Bengal and Others (1996 1 CLR 709). In that case the petitioners who had been employed as daily labourers on casual basis in fish seed farm since 1983-84 prayed for regularisation/absorption in service. The court after referring various decisions of the apex court held in paragraphs 11 and 12 that the recent trend of decisions of the Supreme Court is that eligibility and continues working for how so over long period should not be permitted to over-reach the law. The court finally held that it is not possible to allow the partners prayer for direction to regularise/absorbs them as sought for.

In the light of the above decisions the claim for regularisation does not arise at all.

18. I shall now pass on to the merits. The workman is claiming reinstatement on the ground that he was denied employment in 1981 while 440 contract workers and 48 temporary workers were departmentalised by the management company. The case of management is that departmenasation was done as per Ext. M-1 settlement and the workman was not departmentalised as his claim was not included in the annexure to that settlement which shows that he was not an employee at all. Further his name was not included in the Provident Fund register and all the employees worked in the company were included in the Provident Fund Scheme. it is also stated by MW-1 that all the contract employees worked in the company were included in the Form-B register and the name of the workman was not in that register which was the reason for not including him in the annexure to the above settlement. According to MW-1 Form-B register was the basis for inclusion of name in Ext. M-1 settlement. In the light of this contention Form-B register is a crucial document but the management has not produced the same before this Tribunal on the ground that it has been produced in an arbitration case pending before the Supreme Court. MW-1 has not stated even the case number allegedly pending before the Supreme Court. The pendency of such a case is not at all proved by producing any document. There is also no statement in the counter statement filed by the management that Form-B register has been producted before the court. Hence the statement cannot be accepted. In this state of affairs it can only be presumed that the management has not produced Form-B register before this court purposely because if produced that would prove against the case of management. Since Form-B register not before this court the contention of management that all the contract workers were included in the Form-B register and the name of the workman was not in that register which is the reason for not including him in the annexure to Ext. M-1 settlement cannot be accepted. MW-1 has deposed that in the annexure to Ext M-1 after Sl. No. Form-B register number of the employees is stated and it is thus stated upto Sl. No. 395. But in the annexure from Sl. Nos. 396 to 433 no Form-B register No. is shown. To a pointed question by the learned counsel for the workman for not stating the Form-B register No. from 396 to 433 MW-1 has stated that in 2nd column card No. of the employees is stated and that is not Form-B register No. This contrary statement of MW-1 itself negatives the case of management that all the contract employees were included in the Form-B register and only such persons were departmentalised after including in Ext. M-1 annexure. In Ext. M-1 annexure upto Sl. No 395 the category number and date of birth of the persons are stated. But from 396 onwards only address is stated. MW-1 pleaded ignorance in answer to a specific question during his cross examination that the 48 temporary employes employed along with Sri Suresh are the persons stated as Sl. Nos. 396 onwards. This also supports the case of Sri Suresh that 48 persons temporarily employed along with him were departmentalised sidelining him. The management has also not produced the Provident Fund Register to show that all the employees were included in the Provident Fund Scheme. There is absolutely no evidence to prove that Provident Fund contribution has been deducted from employees stated as Sl No. 396 onwards in Ext. M-1 annexure. This support the case of workman that employees without including in Provident Fund Scheme were also worked there. Therefore the case of management based on Form-B register and Provident Fund Register for not departmentalising the workman is without force.

19. The definite case of the workman is that he has worked as a clerk under the contractor Sri V. G. George in the year 1979-80 and subsequently under the contractor Port Workmen Co-operative Society upto 1981. It is also his case that he was a temporary employee out of 49 such employees and 48 temporary workers were departmentalised except him as his name was not sponsored by any union because he was not a member of any union. Exts. W-5 and W-6 conduct and experience certificates issued by the two contractors to the workman show that he had worked under the contractors in the mining division of the management company. It is true that the contractors were not examined here to prove the claim of the workman. But WW-2, who is a workman in the management company, has categorically deposed that while he was working as a contract employee the workman was also working in the company as a clerk. This witness has further stated that he is not aware of any Form-B register. There are no reasons to disbelieve the evidence of WW-2 supported by Exts. W-5 and W-6 certificates and the evidence of the workman. In the absence of Form-B Register and Provident Fund Register the case of the workman is only to be accepted to hold that he was a temporary contract employee under the management from 1979 to 1981 and worked in the company during that period.

20. According to the management as per clause 6 of Ext. M-1 settlement those who were not departmentalised were paid compensation by the contractor and the workman was not given compensation which shows that he was not a contract worker but only a personal employee of Sri V. G. George. As stated above the workman was not a member of any union and that is the reason for not including his name in the annexure to Ext. M-1 settlement according to him. As per clause 6 of Ext. M-1 compensation is payable to the persons represented by the union. Since he was not a member of any union, he was not eligible to get compensation as per Ext. M-1 settlement. So the non payment of compensation will not negative his claim. It has come out in evidence that the management has regularised some employees in the year 1995 also. Of course according to the management they were working as casual employees and hence they were regularised. But management has not produced any document to prove this. The non production of any such document fully strengthens the definite case of the workman that the management has regularised persons who had never worked in the company. But at that time the management has not considered the claim of the workman. The action of management in not providing employment to the workman on the ground stated above is quite unjustifiable. However since I have found above that this reference is bad in law and no industrial dispute can exist between the parties, the relief praved for by the workman cannot be granted.

21. For the foregoing reasons, an award is passed holding that this reference is bad in law and the workman is not entitled to get any relief in this reference.

C. N. SASIDHARAN, Industrial Tribunal

APPENDIX

Witnesses examined on the side of the Workman :

WW-1—Sri S. Suresh.

WW-2—Sri D. Chandrasanthan.

Witness examined on the side of the Management :

MW-1—Sri P. M. Prasantha Kumar.

Documents marked on the side of the Workman

Ext. W-1—Photostate copy of the judgement of the High Court of Kerala in O.P. No. 11631/95 I.

Ext. W-2—Photostat copy of conciliation failure report addressed to the Secretary, Government of India, Ministry of Labour from the Regional Labour Commissioner Central Cochin dated 16-11-1994.

Ex. W-3—Copy of the minutes of conciliation proceedings held on 25-10-1994 between Sri Suresh and the management.

Ext. W-4—Photostat copy of the age certificate of Shri Suresh.

Ext W-5—Photostat copy of experience certificate in the name of the workman issued from Port Workmen Co-operative Society dated 4-1-1982.

Ext. W-6—Experience certificate in the name of the workman issued from Port Workmen Co-operative Society dated 4-11-1982.

Ext. W-7—Letter issued to Sri Suresh from the Labour Commissioner dated 22-11-1990.

Ext. W-8—Certificate of posting.

Ext. W-9—Letter issued to Sri Suresh from the Dist. Collector Kollam dated 7-2-1992.

Ex W-10—Letter issued to Sri Suresh from the management company dated 19-4-1989.

Ext. W-11—Card issued to Sri Suresh from the Office of the Chief Minister of Kerala dated 29-6-1982.

Ext W-12—Card issued to Sri Suresh from the Office of the Labour Minister of Kerala dated 16-6-1982.

Ext. W-13—Letter issued to the Generral Manager of the management company from the Labour Commissioner dated 19-12-1990 with copy to Sri Suresh.

Documents marked on the side of the Management :

Ext. M-1—Photostat copy of memorandum of settlement under Section 12(3) of the Act between the management and the unions dated 3-12-1981.

Ext. M-2—Office copy of letter addressed to the Labour Commissioner, Trivandrum from the General Manager of the management company dated 11-2-1991.

नई दिल्ली, 29 जून, 1998

का.आ. 1432.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फिक्सीट प्राइवेट लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-6-98 को प्राप्त हुआ था।

[सं. एल-29011/22/87-डी-III(बी)]

बी.एम. डैविड, डैस्क अधिकारी

New Delhi, the 29th June, 1998

S.O. 1432.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Fixit Private Ltd., and their workman, which was received by the Central Government on the 29-6-1998.

[No. L-29011/22/87-D. III(B)]

B. M. DAVID. Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, MADRAS

Wednesday, the 18th day of March, 1998

PRESENT :

Thiru S. Ashok Kumar, M.Sc., B.L.,
Industrial Tribunal.

Industrial Dispute No. 83 of 1987

(In the matter of dispute for adjudication under Section 10(1)(d) of the I.D. Act, 1947 between the Workmen and the Management of Fixit Private Ltd., Ariyalur).

BETWEEN

The Workmen represented by
The General Secretary,
Tamilnadu National Mine Workers Union,
57-Court St.,
PO : Ariyalur,
District : Trichy (T.N.).

AND

The Agent (Mines),
Fixit Private Ltd.,
P.O. Ariyalur,
District : Trichy (T.N.).

REFERENCE :

Order No. L-29011/22/87-D.III(B), Ministry of Labour, dated 22-7-87, Government of India, New Delhi.

This dispute coming on for final hearing on Friday, the 9th day of January 1998. upon perusing the reference, claim, counter statements and other connected papers on record and upon hearing the arguments of Thiru K. Chandru, Counsel for petitioner and of Thiru T. S. Gopalan, Advocate appearing for the respondent and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

The Government of India, Ministry of Labour by their order dated 22-7-87 in Ref. No. L-29011/22/87-D.III(B) have referred the following issues for adjudication by this Tribunal :

(1) Whether the management of Fixit Private Limited in relation to its Aminabath Kairalbath Lime Stone Mines is justified in denying extension in service upto the age of 60 years, to the following three workmen on account of alleged medical unfitness ?

If not, to what relief they are entitled to ?"

1. Shri R. Palanimuthu T. No. 80

2. Shri M. Kumaran T. No. 270

3. Shri K. Palanimuthu T. No. 290.

(2) Whether the management of Fixit Private Ltd. in relation to its Aminabath, Kairalbath Lime Stone Mine is justified in terminating the services of the workman Shri V. Murugaiyan, T. No. 24 with effect from 31-12-86 on account of alleged Medical Unfitness ? If not, to what relief the said workman is entitled to ?

2. The main averments found in the claim statement filed by the petitioner are as follows.—The petitioner-union reepresents substantial section of workmen employed by the respondent in their mines at Periyanagalur. The respondent has got certified standing orders and also it is covered by the provisions of the Mines Act and its rules. The petitioner union submitted amendment to the certified standing orders with reference to the age of retirement and they wanted 60 years to be age of retirement. That is the age of retirement prevalent in all the mines in the State of Tamil Nadu. The petitioner union was unsuccessful before the certifying officer and thereafter it preferred an appeal under Section 6 of the Industrial Employment (Standing Order) Act, 1946. The Chief Labour Commissioner (Central) who is the appellate authority accepted the contention of the petitioner union and amended Standing Order 14 by raising the age of retirement uniformly to 58 years. He also provided for continuance of service of workmen for a period of two years provided that a workman is found medically fit. The order came into operation with effect from 12-9-1986. The petitioner union gives below the details regarding the termination of four workmen :

1. R. Palanimuthu, Token No. 80 : R. Palanimuthu retired by the respondent by an order dated 1-12-1986. Even before the said order was issued, the respondent informed R. Palanimuthu by an order dated 29th July, 1986 that as he was attaining 58 years on 31-12-1986, he will be retired from service on that day. Immediately upon its receipt the petitioner union wrote to the respondent by letter dated 29-7-1986 stating that on the day of the notice namely 29th July, 1986 the concerned worker was only 58 years and that he was eligible to continue in service for two years. When there was no reply from the respondent the petitioner union also wrote a letter dated 26-11-1986 stating that the respondent was withholding the medical results without any reason and that they should furnish the same. The respondent instead sent notice dated 1-12-1986 stating that the workmen will be retired on the day as already notified. Immediately the petitioner-union sent a protest letter dated 3-12-1986 to the respondent and also questioned the action of the management and complained that the respondent was violating the provisions of the Certified Standing Order which were newly certified. The union also questioned the so called medical examination said to have been conducted by them. When they did not get any reply the union produced these workmen before the Headquarters Medical Officer, Trichy. The Medical Officer found that the concerned workman was fully fit to work till the age of 60 years. The said Certificate was also enclosed alongwith the Union's letter. Subsequently the petitioner-union by its letter dated 8-12-1986 wrote to the respondent stating that since the company's medical officer's report was biased and there are also conflict with reference to the correctness of his medical opinion demanded the reference of the workmen to a medical board at Trichy. For this the respondent sent a reply dated 11-12-1986 stating that they need not send the workman for any medical board and company's medical officer's opinion alone is final.

(2) The case of M. Kumaran, Token No. 270 : The above said workman was originally informed by the respondent by a letter dated 29-7-1986 that he will be retired on 31-12-1986 on reaching the age of superannuation namely 58 years. This was contested by the petitioner union by its letter dated 29-8-1986. In fact when the Company's doctor gave a certificate that the workman was more than 60 years old, the said claim was contested and the real age of said workman was examined by a senior doctor who certified the age as 55 years of age on 30-2-1982. Therefore when the company informed that he will be retired on 31-12-1986, the workman was only 55 years old and the workman could not have been retired in terms of the Standing Orders. The respondent by their order dated 1-12-86 once again reiterated the earlier stand. Even assuming that he had completed 58 years of age, in terms of the new standing orders the concerned workman was entitled to continue in service till he reaches 60 years. Therefore the Company hurriedly examined the said worker and

disqualified from continuing in service. The workman examined himself before a medical officer at Trichy and got a certificate dated 12-12-1986 stating that he is having clear vision and also another certificate from the medical specialist dated 8-12-1986 stating that he does not have any evidence of hiper-trophy. This evidence was not accepted by the respondent and thereafter the petitioner-union was forced to raise a dispute after having failed in the protracted correspondence it had with the respondent.

(3) Shri K. Palanimuthu, Token No. 290 : The said workman was informed by the respondent vide their letter dated 29-7-1986 stating that he will be retired from service on 31-12-1986. The concerned workman got a certificate dated 12-12-86 from the Government Doctor at Trichy stating his vision was normal and that he can discharge regular duties. Likewise he also got a certificate from a medical specialist working in Government Headquarters Hospital that his heart condition was also clinically normal. The workman disputed the finding of the Company's medical officer that he is having heart condition. Inspite of the controversy regarding the medical opinion given by the Company's Medical Officer and that of the Doctor working at the Headquarters hospital, Trichy, the respondent did not think fit to refer the case of the workman for a final opinion by the medical board.

(4) Shri V. Murugaiyan, Token No. 24 : The said workman met with an accident outside the course of his employment on a public highway. After treatment the Government doctors issued a certificate of fitness. But however the respondent Company's Medical Officer as directed by the management, found him medically unfit and accordingly by letter dated 1-12-1986 he was found unfit to continue in service. The Government doctor in the Raja Mirasdar Hospital, Thanjavar found him medically fit to continue in service provided he works with a specially raised Chappals. In case the workman is found medically unfit, under Standing Order No. 11 applicable to the respondent he is entitled to have his case referred to a medical board in terms of rule 29(j) of the Mines Rules 1956. Even though the said workman submitted his appeal his case was not referred for any final opinion by a higher forum. Aggrieved against the said conduct of the respondent the petitioner union raised a dispute before the Assistant Commissioner of Labour (Central) by its letter dated 9-12-1986. The petitioner union also further gave supplementary remarks dated 17-4-1987. The conciliation officer as he could not bring about any mediation sent his failure report dated 1-5-87 and the Government of India upon the receipt of the same referred the issue as stated already. The action of the respondent in prematurally retiring the three workmen and terminating another worker on the alleged ground of medical unfitness is wholly illegal, unjust and liable to be set aside. The respondent cannot read the Standing orders in isolation and the entire Standing orders have to be read together. Any other construction to read Standing Order 11 and 14 is not only illegal but will defeat the very spirit of Standing order 11 : The fact that the medical specialists and responsible government doctors have given opinions which substantially varies than that of the company's medical officer (who is only a paid employee of the respondent). Shows that these cases are eminently fit cases to be referred to the medical appellate board and in as much as the respondent had not cared to do the same their actions are illegal. The workmen have right to continue beyond the age of 58 years by virtue of their being medically fit and the action of the respondent in terminating the service prematurally would amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act and in as much as the mandatory provision with reference to retrenchment have been not followed the action taken by the respondent is void ab-initio. The petitioner prays to pass an award holding that non-employment of the 4 workmen are not justified and to reinstate them with back wages and other attendant benefits.

3. The main averments found in the counter statement filed by the respondent are as follows.—The respondent herein has, in its control certain limestone mines, situated at Periya Nagalur Aminabath and Kairalbath at Ariyalur. The employees are governed by the Standing Orders which have been certified. Clause 14 of the said Standing Order relate to the age of superannuation of the employees, which reads as follows.

> "Retirement.—Every workman shall retire on attaining the age of 58 years. The management reserves its right to retain/re-employ person in service after attaining that age at its discretion. However, such extension of service shall not exceed more than 2 years at a time."

The petitioner-union sought a modification thereof by filing an application under the Industrial Employment Standing Orders Act before the Certifying Officer, who, in this case, in the Regional Labour Commissioner (Central), Madras. The modification which was sought for was that the age of retirement should be raised to 60 years. On receipt of that application the Certifying Officer, sent notice to the management calling upon them to submit their answer thereto. The Management in its reply stated that there is no need for modification and that there are no grounds for altering the age of superannuation. Thereafter the Certifying Authority passed an order on 29-12-1984 holding that there are no grounds for modifying the age of superannuation and accordingly rejected the application filed by the petitioner-union. The above mentioned order of the Certifying Officer challenged in Appeal by the Periyanagalur Desiya Suranga Thozhilalar Sangam, who is the petitioner herein. The Appellate Authority, by his order dated 19-9-86 has, while retaining the age of superannuation at 58, however, modified the further clause and the relevant modified standing order reads as follows :

> "Every workman shall generally retire on attaining the age of 58 years. Between the 57th and 58th years, the Company's Medical Officer would conduct the medical test and, if the workman is found to be medically fit, he will be retained in service for a period of two more years beyond the age of 58 years i.e. upto 60 years."

From the modified Standing Order, it would be seen that the Appellate Authority had no jurisdiction to do so which clearly interferred with the discretionary power vested in the management as per the existing Standing Orders prior to modification). Under the existing clause (prior to modification) it was within the powers of employer to retain the employee either for a period of two years or less depending upon the facts and circumstances of each individual case. Now, as per the amendment, the management has to retain an employee for two more years, only if he is found medically fit by the Company's Medical Officer. In case of extension of service of workman who have attained the age of superannuation of 58 years, the Standing Orders contemplate medical examination by Company's Medical Officer and his report is final. No appeal has been contemplated as against the report of the Company's Medical Officer. For the present case the Standing Orders alone is applicable and it is the relevant provision. Mines Rules are relevant only in cases of periodical examination of workmen once in five years, who are in service as per the Mines Rules. Only in these cases, the appeal is contemplated and not for the present case. Standing Order No. 11 of the respondent company is also of some significance.

"11. Medical Fitness.—Any workman found to be medically unfit for the work by a nominated medical officer of the Company, or found to suffer from a contageous type of disease, may be discharged by the company after due notice as provided in these orders. If the workman is aggrieved by the finding of the Medical Officer, his case may be dealt with as per Rule 29(j) of the Mines Rules, 1956. If as a result of such appeal, the workman is found to be fit, he will be reinstated with back wages." It could be seen from the above Standing Order that if a workman is found to be medically unfit or if he is found to suffer from a contageous type of disease, the management has got a right to discharge him from service after due notice. Moreover the management has got a discretion to deal with a case of an individual workman under Rule 29(j) of the Mines Rules, 1956. From the above provisions and also the facts it would be clear that there is no right for a workman to get his service extended beyond the age of 58 years. The right to extend the services beyond the age of 58 years for two more years, rests with the management. Only if the employee is found medically fit by the Company's medical officer between the 57th and 58th years, then the workman may be eligible to get extension of service for a period of two more years. The concerned workman in Issue No. 1 have all attained the age of superannuation, namely 58 years. According to the Mines Rules as well as the Standing Orders, all the four workmen concerned in both the issues, were subjected to medical examination by the Company's Medical Officer. So far as R. Palanimuthu is concerned, the Company's Medical Officer has clearly opined that he is suffering from Ischaeoraic Heart Disease. He has found him medically unfit and he has also declared him as 58 years old. Thiru M. Kumaran was also examined by the Company Medical Officer who has found him medically unfit and he has also found him to be suffering from Sinus Arthritis both knee joints and he has also declared him to be medically unfit. Thiru K. Palanimuthu was also declared medically unfit and the Company's Medical Officer, who examined him, found him to suffer from Heart Disease. The other workman oncerned in issue No. 2, namely, Thiru Murugaiyan was found medically unfit by the Company's Medical Officer. He has opined that he is having deformed left foot and other diseases as mentioned in the report. Therefore the management exercised their right under the Standing Order as well as the Rules framed under the Mines Act, i.e. Mines Rules 1956 and discharged Thiru Murugaiyan and did not extend the period of service in respect of the three workmen who are concerned in Issue No. 1. All the above four workmen were actually working in the Mines as unskilled workers and they have to carry the evacuvated lime stone and also break them etc. These works involve manual labour and that too in the mines. Even, in the Mines Act, there is a statutory obligation on the part of the employer to subject every workman to periodical medical examination once in five years and in case if any workman is found to be unfit by the Company's Medical Officer, they are liable to be terminated from service on medical grounds. This itself would show that much significance as well as importance has been attached to the medical fitness of every workmen who are working in the mines. Moreover, as stated earlier, even as per the amended Standing Orders, there is no compulsion on the part of the management to retain an employee after he attains the age of superannuation, if he is found medically unfit by the Company's Medical Officer. In all the above mentioned four cases, the Company's Medical Officer has found them medically unfit and therefore the management, accordingly exercising their discretion, did not continue them in employment. It may also be relevant to point out that Sri Murugaiyan, one of the petitioners who is concerned with Issue No. (2) met with a road accident on 9-7-1985. He was on leave from 9-7-1985 to 31-7-1985. He was on loss of pay upto 31-10-85. From November 1985 to December 1986 he was absent. At this juncture it is useful to refer to Standing Orders No. 12 which is extracted below :

"Clause 12—Long illness : If a workman is absent for three months continuously owing to illness or in the event of his absence through illness for broken period aggregating to 45 days, or more during any period of 6 months, the Company shall have the right to terminate his service on grounds of continued illness subject to Standing Order No. 11."

The facts narrated above would clearly disclose that the employee has been absent for more than a year without any permission or leave whatsoever and he was also in continued illness for more than 6 months at a stretch. It is also open to the management to terminate his services on this ground also. The workman cannot validly raise dispute questioning the above mentioned termination. The dispute itself is bad and incompetent in law. On that ground itself, the claim of the workmen has to be rejected and dismissed. The Company need not take cognisance of a medical certificate issued by the Medical Officer of Trichy and the Management is not bound to accept the medical certificates issued by Government Doctor, Trichy. The respondent denies the allegation that the action of the respondent is arbitrary and opposed to certified Standing Orders. The respondent has terminated the services of the workman after complying with the requirements in the Standing Orders and the Mines Rules. The Standing Orders even if it is read together clearly shows that the management has got the power to terminate the services of an employee if he is found medically unfit and also the power not to continue an employee for a period of two more years, if he attains the age of superannuation namely 58 years. The petitioner's contention that the other Doctors have opined that the workmen are medically fit is not bound to be accepted by the management in view of the standing orders and the relevant Mines Rules. The petitioner's contention that action of the respondent in terminating the services prematurely would amount to retrenchment within the meaning of Sec. 2(oo) of the I.D. Act and since the management have not complied with the requirements underlaw, the termination itself is void ab initio is thoroughly unsustainable in law. There is no question of any retrenchment in these four cases. The termination or discontinuance of employment of these 4 workmen will not amount to retrenchment. The respondent prays to dismiss the claim petition filed by the petitioner.

4. On behalf of the petitioner WW-1 and WW-2 have been examined and W-1 to W-13 have been marked. On behalf of the respondent MW1 has been examined and Ex. M-1 to M-10 have been marked. The evidence of WW1 was eschewed at the request of the petitioner.

5. The point for our consideration is.—Whether the respondent management is justified in denying extension in service upto the age of 60 years to Shri R. Palanimuthu, Shri M. Kumaran and Shri K. Palanimuthu, workmen on account of alleged medical unfitness ? If not, to what relief they are entitled to ?

(2) Whether respondent management is justified in terminating the services of Shri V. Murugaiyan with effect from 31-12-1986 on account of alleged Medical Unfitness ? If not, to what relief the said workman is entitled to ?"

6. The Point.—The respondent management has not mines at Arivalur wherein the 4 workmen concerned with this dispute were employed. The respondent management submitted a draft standing orders before Certifying authority on 29-12-84. The Certifying Authority certified the draft orders and clause 14 of the Standing Order after said certification is as follows :

"Clause 14--Retirement--"Every workman shall retire on attaining the age of 58 years. The management

reserves its rights to retain-re-employ a person in services after his attaining that age at its discretion. However such extension of service shall not exceed more than two years at a time."

The said certified Standing Order is Ex. M-10. The General Secretary of INTUC filed an appeal before the Appellate Authority with regard to the draft certified Standing Orders and after hearing of both sides Standing Order 14 was modified as follows :—

"Every workman shall generally retire on attaining the age of 58 years. Between the 57th and 58th years, the Company's Medical Officer would conduct the medical test and if the workman is found to be medically fit he will be retained in services for a period of two more years beyond the age of 58 years i.e. upto 60 years."

The modified Standing Order No. 14 Ex. M.2 came into existance on 10-9-96. Before Ex. M.2 coming into existence, the respondent issued advance information letters to Thiru K. Palanimuthu, Thiru R. Palanimuthu, Thiru M. Kumaran stating that on their attaining age of 58 years on 31-12-1986 they are due for retirement. The said letters are Ex. W-1 to W-3. On 20-9-86 the petitioner union sent a letter Ex. W-4 stating that the above 3 workmen are entitled to work two more years i.e. upto 60 years under Standing Order No. 14. Meanwhile the management subjected the above three workmen and another workmen Thiru V. Murugaiyan for medical examination by the Company's Medical Officer. The report of the medical examination of these four workmen are Ex. W-6, W-7, W-8 and W-9. On 26-11-86 the petitioner-union sent a letter Ex. W-5 to the management requesting to furnish copies of the medical reports of these four workmen. On 1-12-86 the respondent management issued a letter to the 3 workmen Thiru R. Palanimuthu, Thiru K. Palanimuthu and Thiru M. Kumaran stating that in pursuance of their earlier letter dt. 29-7-86 (Ex. W-1 to W-3) they shall be retiring from 31-12-86, afternoon. The said letters are Ex. W-10, W-11 and W-12. On 3-12-86, the petitioner union sent a letter Ex. W-13 to the respondent managtment questioning the validity of the medical report prepared by the Company's Medical Officer and requesting the management to send the concerned workmen either to the District Medical Officer or to the Medical Board. Since the management did not send these workers to the Medical Board or to the District Medical Officer by a letter dated 6-12-86 marked as Ex. W-14, the petitioner-union requested the District Medical Officer to re-examine the 3 workmen with regard to their fitness. On 8-12-86 the petitioner union sent a letter to the management informing that the civil surgeon of the Govt. Hospital at Trichy has not found any illness on the part of the three workers and requested the respondent management to send the three workers to the Medical Board at Trichy on 10-12-86. On 9-12-86 the petitioner union sent a letter Ex. W-16 to the Assistant Labour Commissioner, Central Madras complaining about the failure of the respondent management to send reply to their letters and to convene an urgent conciliation to avert the concerned workers being thrown out of employment after 31-12-86. In the said letter the case of Thiru V. Murugaiyan was also referred. On 11-12-86, the respondent management sent a reply to the petitioner union Ex. W-17 stating that the opinion of the Company's Medical Officer cannot be questioned, as per Standing Order No. 14 after the amendment. The reply sent by the union to the said letter on 13-12-86 is Ex. W-18. On 13-12-86 the petitioner union sent a reply once again protesting against the management's decision. To the said letter the management sent Ex. W-19 letter dated 19-12-86 stating that the Medical fitness as envisaged in the Certified Standing Order No. 11 and the Standing Order No. 14 pertaining to retirement are entirely different. Thereafter the 3 workmen appeared before the Medical Board at Trichy and they were issued Certificates Ex. W-23, 24 and 25. The Medical Board has not found any unfitness on the part of the 3 workmen in the above said three reports.

As regards Thiru V. Murugaiyan, there is no dispute that he met with a road accident on 9-7-85 and he was on leave from 9-7-85 to 31-7-85 thereafter upto 31-10-85 he was on leave on loss of pay From November 1985 to December '85 he was absent. The Company Medical Officer has certified that he is suffering from deformed left foot and he is medically unfit for the employment in mines due to ankles is on of the left ankle and left foot in flexion. The said medical report is Ex. W-9. On 16-7-86 the Doctor at Thanjavur Govt. Hospital issued a certificate W-31 certifying the same disability but has advised him to wear heel raised chappal on both sides and that he will be fit for duties as cleaner with heel raised chappals. Subsequently on 28-7-89 all the above workmen got their gratuity and other dues settled and receipts signed by the 4 workmen are Ex. M.9 series.

The contention of the petitioner as regards the 3 workmen Thiru R. Palanimuthu, Thiru M. Kumaran, Thiru P. Palanimuthu is that the report of the Company Medical Officer could not be accepted since the Medical Board Certified that these 3 workmen are not suffering from any disease which will make them unfit to work in the mines and the respondent should not have discharged the workman Thiru V. Murugaiyan since he cannot continue with the work by wearing heel raised chappals. The contention of the respondent management is that Standing Order No. 11 and 14 are mutually exclusive and according to the Standing Order No. 14, there is no provision for appeal over the opinion of the Company Medical Officer and therefore there is no arbitrariness in retiring the three workmen by name R. Palanimuthu, M. Kumaran, and K. Palanimuthu and Thiru V. Murugaiyan has been discharged under Standing Order No 12. The learned counsel for the petitioner argued that Standing Order No. 11 should be read together with Standing Order 14. Standing Order No 11 is as follows :—

"Medical Fitness—Any workman found to be medically unfit for the work by a nominated medical officer of the Company, or found to suffer from a contageous type of disease, may be discharged by the Company after due notice as provided in these orders If the workman is aggrieved by the finding of the Medical Officer, his case may be dealt with as per Rule 29(i) of the Mines Rules, 1956. If as a result of such appeal, the workman is found fit he will be reinstated with back wages."

Standing Order No. 14 after amendment is as follows :—

"Clause 14—Retirement—Every workman shall generally on attaining the age of 58 years."

Between the 57th and 58th years, the Company's Medical Officer would conduct the medical test, and, if the workman is found to be medically fit it will be retained in service for a period of two more years beyond the age of 58 years i.e. upto 60 years.

Rule 29 B of the Mines (Amendment) Rules 1978 deals with initial and periodical examination of the workmen working in the mines. A person found unfit during examination by Company Medical Officer has got a right to appeal under Rule 29(j) before the Appellate Medical Board constituted under Rule 29(K) of the Mines Rules. The same procedure is adopted for those persons who are employed in the mines according to the Standing Order No. 11 of the respondent management. This Standing order deals with Medical unfitness of the workmen employed in the mines but Standing Order No. 14 deals with extension of services of the workman beyond the age of retirement i.e. 58 years, if they are found not medically fit for working in the mines. Thus it would be seen that Standing Order No. 11 deals with medical unfitness whereas Standing Order No. 14 deals with medical fitness. The learned counsel for the respondent argued that a person not fit to work in mines is different from unfitness. According to him not fit means he is not in a manner or in position of doing his work as before whereas unfitness means the workman is not totally fit or unfit to do the hazardous work under the ground When Standing Order No. 11 provides for appeal before the Medical Board, no such provision is given in Standing Order No. 14. The Appellate Medical Board contemplated under Rule 29K of the Mines (Amended) Rules, 1978 shall be as follows :—

"The board shall consists of the following officers :—

(a) One duly qualified Medical Officer in the employment of the Directorate

General of Mines, safety who shall also act as convenor of the Board.

(b) One Medical Officer duly qualified in allopathic system of medicine to be nominated by the Chief Inspector in consultation with the Welfare Organisations set up by the Central Government for the persons employed in the Mines.

(c) One Medical Officer duly qualified in Allopathic system of medicine employed in the S ate or Central Government or a Government Undertaking and not below the rank of Assistant Civil Surgeon. Provided that if a medical officer under Clause (b) or (c) is not available the Appellate Medical Board shall be constituted with two persons only."

From the above rule 29(k) of the Mines (Amendment) Rules, 1978 it is clear that the medical officers who will constitute Appellate Medical Board are a different category and not District Medical Officers who have subsequently examined the 3 workmen and issued certificates Ex. W-23, 24, 25. While standing Order No. 11 deals with periodical examination of workmen in the Mines with regard to their unfitness, Standing Order No. 14 deals with Medical examination of persons due to retirement at the age of 58 years with regard to their fitness for continuance upto 60 years. The general age of retirement is 58 years. The services of a person found to be medically fit by the Company Medical Officer can be extended for 2 more years of service, i.e. upto 60 years, according to Standing Order No. 14. It is clear that Standing Order No. 11 and Standing Order No. 14 are totally different with regard to their purpose and procedure. Under Standing Order No. 11, there is specific provision for an appeal before the Appellate Board contemplated under Rule 29K of the Mines (Amended) Rules, 1978. Whereas no such provision is available under Standing Order No. 14. WW2 during cross-examination has admitted that there is no enmity between the 4 workmen concerned in this dispute and the management and also between the Company Medical Officer and the concerned four workmen and that the same Medical Officer has certified several other employees who have attained the age of 58 years to continue upto 60 years, and that except the above 3 employees concerned in this dispute who have attained the age of 58 years no other workman was denied extension upto the age of 60 years. Ex. M. 7/series is the Medical certificates issued by the same Company Medical Officer in respect of 11 other employees who were permitted to continue after crossing the age of 58 years on the ground of the fitness certificate. Therefore, it cannot be said that there is any motive for the Company Medical Officer to give a medical unfitness certificate for these 3 workmen in the absence of any enmity or dispute with the management. It is not the case of the petitioner that these 3 workmen are in any way concerned with union activities. They have been examined by the District Medical Board on 12-1-87 i.e., after their retirement and no unfitness has been found on them. However as already mentioned, the Appellate Medical Board as contmplated under Rules 29(k) is different from the one who examined these 3 workmen. As already stated when there is an appeal provision under Standing Order No. 11 there is no such appeal provision under Standing Order No. 14. In the absence of any malafide or arbitrariness on the part of the Company's Medical Officer it cannot be said that the Certificates issued by the said Medical Officer are invalid. The normal retiring age is 58 years. An extension of 2 years can be given to the workmen if they are found medically fit by the Company Medical Officer. Since the Company Medical Officer has found that the 3 employees Thiru K. Palanimuthu, Thiru R. Palanimuthu, and Thiru M. Kumaran are not medically fit for extension for 2 more years there is justification on the part of the respondent management in superannuating them. Further these 3 employees have settled their gratuity and other dues on 28-7-89 and receipts issued by these three workmen and Thiru V. Murugaiyan have been marked as Ex. M-9 series. In all the 4 receipts under Ex. M-9 series the treasurer of the petitioner union has signed as a witness. All these 4 employees have not been examined as witness before this Tribunal. One Thiru Palanisamy, Vice President, of the petitioner-union was examined as W.W.1. On 6-6-97 the petitioner has filed a memo to discard the evidence of W.W.1 and the Court passed an order to eschew his evidence. Thereafter W.W.2 General Secretary of the petitioner-union has been examined. The petitioner has not stated any reason for non-examination of the concerned four workmen. The learned counsel for the respondent argued that the concerned workmen are not interested in the dispute since they have settled their dues as per Ex. M-9 series but the union alone is interested in continuing this dispute. The said contention of the learned counsel of the respondent cannot be simply brushed aside as one without substance because of none of the workmen have been examined. Their settlement receipts have also been marked.

However the case of Murugaiyan is different. It is true that he has sustained injury in a road accident outside the course of his employment and he was on leave from 9-7-85 to 31-7-85. He was on loss of pay upto 31-10-85. From November 1985 to December 1986 he was absent. The respondent management contended that under Standing Order 12 if a workman is absent for 3 months

continuously owing to illness or for broken periods aggregating to 45 days or more during any period of 6 months he may be terminated from services on the ground of continued illness, subject to Standing Order No. 11. The Company Medical Officer has held that due to the accident his left foot is deformed and ankylosis of the left ankle and left foot in flexion and that the old fracture has not united properly. The said certificate is Ex. W-9. Subsequently when he was examined on 16-7-86 by the Medical Officer, Thanjavur Government Hospital the same disability has been found but it has been certified that he is fit for duties as a cleaner with heel raised chappals. The respondent management could have given him an opportunity to be employed in some other category in their establishment. The age of Murugaiyyan is not mentioned in the Medical Certificates, Ex. W-9 and W-31, but the fact remains that he was not in the age of superannuation. Even in the claim statement the age of Murugaiyyan has not been mentioned. The petitioner union has requested the management to send him for the opinion by a medical board constituted under the Mines (Amendment) Rules. But the respondent management has not sent him for a opinion before the Medical Board constituted under Mines (Amendment) Rules. Before discharging the workman the respondent management ought to have obtained opinion of the medical board as contemplated under the Mines (Amendment) Rules. Standing Order No. 12 can be applied only subject to the provisions of Standing Order No. 11 wherein opportunity is given to the workman to prefer an appeal before the Appellate Medical Board. Therefore, the respondent management wrongly terminated the services of V. Murugaiyyan under Standing Order No. 12 without referring him to the Medical Board. No charge sheet was issued or enquiry was conducted regarding the absence of Murugaiyyan during the relevant period. But the respondent has terminated his services abruptly. In 1993 2 LLJ P 696 between D. K. Yadav and J.M.A. Industries Ltd., and Hon'ble Apex Court has held that the order of termination of workman visits the civil consequence of jeopardising not only the worker's livelihood but also the career and livelihood of the dependants." In 1995 2 LLJ P 716 between Rameshwar Dass & Ors etc. and State of Haryana & Ors., the Hon'ble Apex Court has held as follows :

> "It appears that some of the appellants suffered serious injuries during the course of their employment which incapacitated them from performing their duties. Initially, they were transferred to lighter duties, but while they are working on those posts, they were retired from service on the ground that they were medically unfit From the written submission filed on behalf of the respondents before the High Court, it appears that the terminal benefits have been paid to them. If the judgement of this Court in Anand Bihari Vs. Rajasthan State Road Transport Corpn. (supra), is read in its proper context and spirit, then it has to be held that this Court impressed on the State Road Transport Corporation to first provide for alternative jobs to such drivers who have become medically unfit for heavy vehicles. A direction for payment of additional compensation was given only when it is not possible at all in the existing circumstances to provide alternative jobs to such drivers. It need not be pointed out that the authorities of the Corporation should not take recourse only to the payment of the additional compensation without first examining whether such drivers could be put on alternative jobs. Taking all facts and circumstances, into consideration, we direct the respondents to apply their mind properly to the question whether the appellants who have suffered injuries and have become medically unfit can be put to some alternative jobs by way of rehabilitation. The question of pavment for additional compensation will arise only when it is not possible to provide an alternative jobs to them or some of them."

In this case also the respondent management apart from its failure to refer the workman Thiru M. Murugaiyyan for medical examination before the Appellate Medical Board constituted under the Mines (Amended) Rules, the respondent has also not taken into consideration the chances of his employment in some other category like helper, or cleaner or office boy or gardener. Therefore, I hold that the termination of services of Thiru V. Murugaivvan on the ground of medical unfitness is not justified.

In the result, I hold that the respondent is justified in denying extension in services to Thiru R. Palanimuthu, Thiru M. Kumaran, Thiru K. Palanihuthu upto the age of 60 years on account of medical unfitness and they are not entitled to any relief. I also hold that termination of services of Thiru V. Murugaivvan with effect from 31-12-86 on account of medical unfitness is not justifiable and he is entitled for reinstatement in services with back wages and other attendant benefits. Award passed. No. costs.

Dated, this 18th day of March, 1998.

THIRU S. ASHOK KUMAR, Industrial Tribunal

WITNESSES EXAMINED

For Petitioner-Workman :

W.W. 1 Thiru T. Palanisamy.

W.W. 2 : Thiru E. Lakshmipathy.

For Respondent-management :

M.W. 1 : Thiru D. Iravathy.

DOCUMENTS MARKED

For Petitioner-workman :

Ex. W-1|29-7-86 : Letter from the management to Mr. K. Palanimuthu (xerox copy).

W-2|29-7-86 : Letter from management to Mr. R. Palanimuthu (xerox copy).

W-3|29-7-86 : Letter from management to Mr. M. Kumaran (xerox copy).

W-4|20-9-86 : Letter by union to extend the services of the above three members upto 60 years (xerox copy).

W-5|26-11-86 : Letter by the union to furnish the copies of the Medical reports of the Company Doctor with regard to above 3 workmen and Mr. Murugaiyyan (xerox copy).

W-6|4-11-86 : Medical reports issued by the company Medical Officer (xerox copy).

W-7|4-11-86 : -do-

W-8|4-11-86 : -do-

W-9|4-11-86 : -do-

W-10|1-12-86 : Notice of retirement issued to R. Palanimuthu (xerox copy).

W-11|1-12-86 : -do- to K. Palanimuthu (xerox copy).

W-12|1-12-86 : -do- M. Kumaran (xerox copy).

W-13|3-12-86 : Letter by the Union to the Management (xerox copy).

W-14|6-12-86 : Letter by the Union to the District Medical Board (xerox copy).

W-15|8-12-86 : Letter by the Union to the Management (xerox copy).

W-16|9-12-86 : Dispute raised by the Union before the Asst. Commr. of Labour (Central), (xerox copy).

W-17|11-12-86 : Reply by the management to the letter of the union dt. 8-12-86 (xerox copy).

W-18|13-12-86 : Reply by the union to the above letter (xerox copy).

W-19|19-12-86 : Letter by the management (xerox copy).

W-20|25-12-86 : Letter by the union to management (xerox copy).

W-21|2-1-87 : Letter by the union to pay wages to the workers (xerox copy).

W-22|4-2-87 : Letter from Chairman Medical Board to General Secretary, Mine Workers Union (xerox copy).

W-23|4-2-87 : Medical certificate of Mr. Kumaran (xerox copy).

W-24|4-2-87 : -do- R. Palanimuthu (xerox copy).

W-25|4-2-87 : -do- K. Palanimuthu (xerox copy).

W-26|4-2-87 : Letter by union to management (xerox copy).

W-27|4-2-87 : -do-

W-28|17-4-87 : Reply filed by the union fore the Asst. Labour Commissioner (xerox copy).

W-29|1-5-87 : Failure report (xerox copy).

W-30|18-6-87 : Letter by the Union to the Chief Labour Commissioner (xerox copy).

W-31|16-7-86 : Certificate of Mr. A. Navaneetham (xerox copy).

For Respondent-management :

Ex. M. 1|29-12-84 : Standing Orders (xerox copy).

M. 2|10-9-86 : Copy of the order of the Chief Labour Commissioner awarding the Standing Orders (xerox copy).

M. 3| : Postal endorsement in proof of despatch of the order of Chief Labour Commissioner awarding Standing Orders (xerox copy).

M. 4|29-10-86 : Letter from Respondent to R. Palanimuthu, M. Kumaran, K. Palanimuthu and V. Murugaiyyan (xerox copy).

M. 5| : Copy of register of attendance for the period of July 1985 to December 1986—Extract of Murugaiyyan (xerox copy).

M. 6|and M. 7|series : Statement giving the list of workmen who were superannuated on altering the age of 58|60 years and list of workmen who have retired on attaining the age of 60 years and their medical report (xerox copy).

M. 8|8-12-86 : Respondent's reply to Union's letter dated 3-12-86 (xerox copy).

M. 9|28-7-89 series: Receipt of settlement of Gratuity & other dues received by V. Murugaiyyan, R. Palanimuthu, M. Kumaran & K. Palanimuthu (xerox copy).

M. 10|29-12-84 : Copy of relevant portions of the Original Standing Orders (before amendment).

नई दिल्ली, 1 जुलाई, 1998

का.आ. 1433.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण मे, केन्द्रीय सरकार उड़ीसा माईन्स कार्पोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध मे निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-98 को प्राप्त हुआ था।

[स. एल-28012/3/93-आई आर (विविध)]
बी.एम. डैविड, डैस्क अधिकारी

New Delhi, the 1st July, 1998

S.O. 1433.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure. in the industrial dispute between the employers in relation to the management of Orissa Mining Corporation and their workman, which was received by the Central Government on 1-7-98.

[No. L-28012|3|93-IR(Misc.)]
B M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA.
Industrial Dispute Case No. 42|97|(52)|94)(c)

Dated, the 1st May, 1998

PRESENT :

Sri R. N. Biswal, LL.M.,
Presiding Officer,
Industrial Tribunal,
Raurkela.

BETWEEN :

The General Manager,
Orissa Mining Corporation,
P O. Barbil, Keonjhar. ... 1st party

AND

The General Secretary
Orissa Mining Workers Union,
At P.O. Guruda, Keonjhar. ... IInd party

APPEARANCES :

For the Ist party : Sri S. C. Panda, Dy. Manager.

For the IInd party : In person.

AWARD

The Govt. of India in Ministry of Labour Department in exercise of their power conferred under clause (d) of sub-section (1) and sub- section 2(a) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide reference No. L-28012|3|93-IR(Misc.) for adjudication :

"Whether the action of the management of Orissa Mining Corporation in not giving designation and class III grade to Sri Mitrabhanu Pradhan and as register keeper and teacher|head pandit to Sri Bidyadhar Mahakud, as per the award of Industrial Tribunal. Bhubaneswar in I.D. case No. 61|87 and designating them as plot attendant and library attendant as per office order dt. 27|28-9-91 is justified ? If not, to what relief the workmen are entitled ?

2. The case of the 2nd party union in short is that it has been in I.D. case No. 61 of 87 that the 2nd party workmen namely Sri Mitrabhanu Pradhan and Sri Bidyadhar Mahakud be designated as register keeper and Teacher|Head Pandit respectively. But the Ist party employer designated Sri Mitrabhanu Pradhan as plot attendant and Sri Bidyadhar Mahakud as Library attendant for which both of them sustained loss and their future promotional aspect was affected. Under such circumstances, the 2nd party union prays to pass the award in its favour.

3. As against this, the Ist party management contended that as per the award dt. 20-9-89 passed in I.D. Case No. 61|87 it examined all individual cases of the workmen concerned alongwith the present two 2nd party workmen & allowed fitment in favour of them. The 2nd party workmen Sri Mitrabhanu Pradhan & Sri Bidyadhar Mahakud were fitted in the post of plot attendant and library attendant respectively vide office order dt. 28-9-91 after taking into account their qualification and eligibility as well as availability of post as per the Orissa Mining Corporation. Recruitment & Promotion Rules, 1976.

4. There is no sanctioned post of register keeper or primary school teacher under the Ist party. As

per the O.M.C. (R&P) Rules, 1976 the minimum requisite qualification for the post of Jr. Time Keeper is matric while that of a teacher is trained matric after 1994 amendment. Since the 2nd party workmen Bidyadhar Mahakud & Sri Mitrabhanu Pradhan do not possess the requisite qualification for Asstt. Teacher & Jr. Time Keeper, they could not be absorbed in those posts. The Ist party admitted that some other workers who had requisite qualification were allowed the designation of Asst. Teacher & Jr. Time Keeper after taking into account their respective qualification and suitability for the said posts. As per the earlier provision of recruitment & promotion rules those of the 2nd party workmen in I.D. case No. 61|87 who were teachers having the basic qualification of matriculation and above were allowed to be designated as asst. teacher except the present 2nd party workmen Bidyadhar Mahakud since he did not possess the requisite qualification and eligibility to hold the said post. Taking his qualification into consideration Sri Bidyadhar Mahakud was suitably fitted in the post of library attendant. Similarly since Sri Mitrabhanu Pradhan had no requisite qualification for register keeper he was fitted in the post of plot attendant. So according to the Ist party management the award of the Hon'ble Tribunal passed on 20-9-89 in I.D. Case No. 61 of 87 was faithfully implemented by it.

5. On the basis of the above pleadings of the parties the following issues were framed :

I. Whether the action of the management of Orissa Mining Corporation in designating Sri Mitrabhanu Pradhan as plot attendant & denying him Class III status & also designating Sri Bidyadhar Mahakud as Library Attendant in contravention of this Tribunals direction in I.D. case No. 61|87 is justified ?

II. Whether the reference falls under the purview of Section 10 or 36-A of the I.D. Act ?

III. If not, to what relief the workmen are entitled ?

6. To prove its case while the 2nd party union examined two witnesses (both the 2nd party workmen). The Ist party management examined only one witness to prove its stand.

7. Issue No. II.—In a reference under section 36-A the government should specify as to on what point of interpretation it has any doubt or difficulty. But the reference in the present case does not specify any such point. Again all parties to the original reference which resulted in the award should be made party in a reference under section 36A of the I.D. Act irrespective of their interest in such matter. In the original reference in I.D. case No. 61|87 there were 34 disputant workmen. But in the present reference there are only two 2nd party workmen. So it cannot be said that the present reference is made under section 36-A of the I.D. Act. The Ist party management claim to have implemented the award passed in I.D. case No. 61|87 faithfully & the 2nd party workmen deny it. Admittedly if Sri Bidyadhar Mahakud is not given the designation of teacher & Mitrabhanu Pradhan, the register keeper in Cl. III grade they would sustain financial loss. So the reference is under section 10 of the I.D. Act

8. Issue No. I—The operative portion of the award passed by P.O., Industrial Tribunal in I.D. Case No. 61 of 87 reads as follows :

> "I could only direct that these 34 2nd party workmen should be paid wages at the rates equivalent to minimum pay in the coresponding junior grades available without any increment with effect from the date of reference i.e. from 14-9-87 with corresponding D.A. & A.D.A. as admissible to them. I would also direct that the management of O.M.C. would decide the question of fitment of those of the 2nd party workmen who have claimed equalisation of wages|pay with that of the Sr. Grade Accountant, Sr. Grade Assistant Mechanics. Grade-I, Wireman, Chrechers within 3 months from the date of publication of this award and allow pay scale admissible to them and pay the arrears, if any due to them on account of such fitment."

It is found from the evidence of W.W. No. 1, Bidyadhar Mahakud that he has been working under the Ist party as a teacher since 18-6-82. This part of his evidence has not been challenged by the Ist party. Ext. 1 shows that his witness was appointed as a teacher w.e.f. 18-6-82 on temporary basis. The Ist party management also does not deny the same. During cross examination it was elicited from this witness that he has passed Class IX only. On perusal of the evidence of M.W. No. 1, it is found that the minimum qualification of a teacher was matriculate in a primary school & subsequently as per the amendment of the year 1994 the qualification was changed to minimum trained matric. So according to the submission of the learned authorised representative of the Ist party since Bidyadhar Mahakud was not a trained matriculate he could not be designated as Asst. teacher and has been absorbed as library attendant. The Ist party management being fully aware of the qualification of Bidyadhar Mahakud appointed him as Asst. Teacher in the year 1982. He has been continuing as a teacher since his appointment. So when the management has engaged Mr. Mahakud as a teacher and he has been working as such, now it cannot say that he is no'

eligible for that post. The Ist party management should not have appointed him as a teacher if he had not the requisite qualification. As discussed earlier in its written statement the Ist party management admitted that some 2nd party workmen in I.D. case No. 61/87 those who had requisite qualification were absorbed as Asst. Teacher. So the management ought have also absorbed Sri Mahakud as Asst. Teacher.

9. As regards Mitrabhanu Pradhan it transpires from his evidence who was examined as W.W. No. 2 that he joined as register keeper under Seerajuddin Company, the mines owner at Buruda. Thereafter he joined in the same post under the Ist party on 18-6-82 and has been continuing as such. He was issued with an appointment order in this regard by the Ist party management, but it was lost. It further transpires from his evidence that on 16-9-91 the Ist party management transferred him as a register keeper to its welfare department which has been corroborated by Ext. 4, the transfer order. The Ist party management also does not deny Mitrabhanu Pradhan to have been engaged as a register keeper under it. As per the award passed in I.D. No. 61/87 (Ext. 2) he should have been designated as Jr. Time Keeper but he was designated as plot attendant. One Jagabandhu Pradhan was working as register keeper, prior to passing of the award vide Ext. 2. After the award was passed he was designated as Jr. Time Keeper. Sri Mitrabhanu Pradhan very fairly deposed that Mr. Jagabandhu Pradhan was matriculate while he himself was a plucked matric. W.W. No. 2 further deposed that Baidyanath Pradhan, one of the 2nd party workmen in I.D. case No. 61/87 is an undermatric He had joined under the Ist party management as a clerk. But after the award was passed in I.D. case No. 61/87 he was appointed as Jr. Time Keeper. The post of plot attendant is a 4th grade post. It further transpires from the evidence of W.W. No. 2 that at present he is working as magazine incharge which is a Grade-I post, but he is getting the salary of plot attendant. Ext. 4, the xerox copy of transfer order shows that Sri Mitrabhanu Pradhan was transferred as record Keeper & placed under the welfare supervisor with immediate effect. So when Mitrabhanu Pradhan was working as record keeper & he is accepted as such by the management only because he has no requisite qualification as deposed to by M.W. No. 1 he cannot be reverted to plot attendant which is a 4th grade post. As mentioned earlier, the Tribunal had directed the Ist party-management to pay wages to 34 2nd party workmen equivalent to the minimum pay in the corresponding Jr. Grade with effect from 14-9-87 with corresponding D.A. & A.D.A. So the award as passed by the tribunal has not been implemented. Accordingly Issue No. I is answered.

10. Issue No. III : Accordingly Mr. Mitrabhanu Pradhan would be designated as record keeper & the other workmen Bidyadhar Mahakud as Asst. Teacher of Primary School with effect from 14-9-87 with back wages. Accordingly the award is passed. Parties to bear their own cost.
Dictated & corrected by me.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 1 जुलाई, 1998

का.आ. 1434.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पूरनापानी लाईमस्टोन डैलोमाईट क्वारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राउरकेला के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-98 को प्राप्त हुआ था।

[सं. एल.-29012/9/91-आई आर (विविध)]
बी.एम. डेविड, डैस्क अधिकारी

New Delhi, the 1st July, 1998

S.O. 1434.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Purnapani Limestone and Dolomite Quarry and their workman, which was received by the Central Government on the 1-7-1998.

[No. L-29012/9/91-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER : INDUSTRIAL TRIBUNAL : ROURKELA

Industrial Dispute Case No. 20/97(23/92)(C)

Dated, the 29th April, 1998

PRESENT :

Sri R. N. Biswal, LL.M.,
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN

The Agent,
Purnapani Limestone and
Dolomite Quary of R.S.P./
SAIL., AT/PO : Purnapani,
Dist. : Sundargarh. ....Ist party

AND

Sri Ram Chandra Satnami and
7 others,
Represented by Secretary,
Rourkela Shramik Sangh (INTUC),
Purnapani Branch
At : Purnapani,
Sundargarh. ....IInd party

APPEARANCES :

For the Ist party....Sri R. C. Tripathy, L.O.

For the IInd party....Sri A. K. Pandey, Secy.

AWARD

The Government of India in Ministry of Labour Department in exercise of their power conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 the Industrial Disputes Act, 1947 have referred the following dispute vide reference No. L-29012|9|91-IR(Misc.) dt. 19|26th May 1992 for adjudication :

"Whether the action of the management of Purnapani Limestone & Dolomite Quarry of Rourkela Steel Plant, Steel Authority of India Ltd., Purnapani, Dist. : Sundargarh in terminating the services of S|Sh. B. Kathoria from May, 86, Dhola Tirkey from 2-7-86 and S|Sh. Ramchandra Satnami, Jalandhar Badaik, Tiru Mahalinga and Sri Karam Chandra Nag from 29-12-86 is lawful and justified ? If not, what relief the workmen are entitled to ?"

2. The case of the 2nd party workmen in short is that they along with others were working in drilling section of Purnapani Limestone & Dolomite Quarry as contract labour. On 25-7-83 the Govt. of India abolished the employment of contract labourers in the job of drilling and blasting in limestone quarries. Accordingly the Ist party management of Rourkela Steel Plant under whose administration the captive mines were functioning regularised the services of all but the 2nd party workmen. Since the 2nd party workmen refused to take their membership in Rourkela Mazdoor Sabha, a stooge union of R.S.P., they were denied of their right to be regularised in service on the false plea that two of them were found medically unfit to work in drilling section and the rest four produced forged caste certificate before the Ist party.

3. It is further contended by the 2nd party workmen that all the records of the 2nd party workmen were in the possession of the management in the form of 'B' register and their files were being maintained by the principal employer. So asking the 2nd party workmen to produce the caste certificate was motivated. Four of the 2nd party workmen were sent to the Tahasildar, Birmitrapur by the principal employer alongwith the secretary of its stooge union for obtaining caste certificate & were trapped in the process. Subsequently they obtained their original caste certificate from their respective competent authorities and submitted to their employer. But the certificates were not accepted.

4. At least dependants of about 50 workmen who were declared medically unfit were provided employment on compassionate ground by the Ist party. In the like manner the Ist party should have provided employment to the dependants of the two poor 2nd party workmen who were found medically unfit. Under all these grounds, the 2nd party union prayed to answer the reference in its favour.

5. As against this, the Ist party management contended that there is no relationship of master & servant between the Ist party management and the 2nd party workmen for which there can exist no industrial dispute. The appointment of the 2nd party workmen in the company was subject to the terms & conditions mentioned in the offer of appointment issued to them. They accepted the terms & conditions of offer of appointment & reported for duty. In terms of the offer of appointment they were sent for medical examination, while two of them were declared medically unfit, the rest four were found to have submitted forged caste certificate for which they were not allowed to join in service. The Ist party management denied the allegation the R.M.S. a labour union and the Ist party management itself jointly planned to deprive the 2nd party workmen from employment.

6. It is the further case of the Ist party management that in terms of the notification issued by the appropriate government the 2nd party workmen alongwith others were to be retrenched. But the Ist party management after due deliberation with the union before A.L.C.(C), Rourkela allowed the 2nd party workmen to continue to work subject to their fulfilment of recruitment norms like interview|test, medical fitness etc. required for employment in regular establishment under the rules of the company. Being found suitable in the interview offer of appointment on terms mentioned therein were sent to the 2nd party workmen. In terms of appointment offer, the 2nd party workmen reported for duty and submitted declaration form. Immediately thereafter they were sent for medical examination. Sri Bhola Tirkey and Karam Ch. Nag, two of the 2nd party workmen were found medically unfit while the caste certificate produced by the rest four workmen viz. Sri B. Kathoria, Ram Ch. Satnami, Jalandhar Badaik and Tiru Mahalinga were found to be forged. So all of them were found not eligible to join in service. Under such grounds the Ist party management prays to pass the award in its favour.

7. On the basis of the above pleadings of the parties, the following issues were framed :

I. Whether the action of the management of Purnapani Limestone & Dolomite Quarry of Rourkela Steel Plant Steel

Authority of India Ltd., Purnapani, Dist. Sundargarh in terminating the services of Sri B. Kathoria, from May, 86, Bhola Tirkey from 2-7-86 and Sri Ram Chandra Satnami, Jalandhar Badaik, Tiru Mahalinga and Sri Karam Chandra Nag from 29-12-86 is lawful and justified ?

II. If not, what relief the workmen are entitled to ?

8. To establish its stand, while the Ist party management examined one witness i.e. the Asstt. Manager of the Ist party, the 2nd party union examined two witnesses to establish its case.

9. Issue No. I :—It is found from the evidence of W.W. No. 1 (Ramchandra Satnami), one of the 2nd party workmen that he worked from 1973 to 1983 under Sundargarh Mining Labour Contract Coop. Society, Sundargarh as a drilling helper. Then from 1983 to 1986 he worked as drilling helper under the Ist party management. Sometimes in the year 1986 he was refused employment under the Ist party. He specifically deposed that when the Ist party management gave offer to make him permanent, he was removed from service. As per the evidence of this witness he himself, Tiru Mahalinga, Budharam Kathoria & Jalandhar Badaik were removed from service on the false allegation that the caste certificate which they produced before the management were forged ones, while the other two 2nd party workmen were removed from service as they were not found medically fit. W.W. No. 2, Karam Ch. Nag corroborated the evidence of W.W. No. 1 by deposing that as he was found to have been suffering from TB, he was removed from service in the year 1986 and that Bholanath Tirkey was also removed from service on medical ground alongwith him. W.W. No. 2 further deposed that Diba & Maga who were working as Driller under the Ist party management were removed from service on medical ground, but both of them compromised and were paid Rs. 16,000 each by the management.

10. It is found from the evidence of M.W. No. 1 that in the year 1983 the Central Government prohibited the drilling job from being executed through contractor. So the contractor under whom the 2nd party workmen were working retrenched them in that year. After their retrenchment, R.M.S. claimed before the management to consider the case of retrenched workmen sympathetically. So the management decided to give them preference in regularising their service in accordance with the proper procedure. On 7-11-85 the 2nd party workmen were called upon by the Ist party management to face an interview for drilling khalasi. All the 2nd party workmen attended the interview on 7-11-85. As the caste certificate submitted by Jalandhar Badaik, Ram Ch. Satnami, Tiru Mahalinga and B. Kathoria were suspected to be forged, those certificates were referred to the Tahasildar, Birmitrapur, who was shown to have issued the same. The Tahasildar, Birmitrapur in his letter dt. 4-7-86 (Ext. B) informed the management that those certificate were not issued by Tahasildar, Birmitrapur. So since the caste certificate of these four workmen were found to be forged, they were not given appointment by the Ist party management.

11. Karam Ch. Nag & Bhola Tirkey were found selected & letter of appointment were sent to them subject to medical fitness. On 20-1-86 both of them were sent to plant medical unit to be medically tested. On medical examination they were not found medically fit for employment. On perusal of Ext. C, letter of communication of plant medical unit, it is found that Bhola Tirkey was not found medically fit. Similarly Karam Ch. Nag was also not found medically fit as found from Ext. D, another letter of communication of the plant medical unit.

12. As discussed earlier, W.W. No. 2, Karam Ch. Nag admitted that he was suffering from TB. Bhola Tirkey has not been examined before this tribunal. There is no convincing reason why the Ist party management would declare these two poor workmen as medically unfit & deprive them and their family members of their bread by denying them employment. The xerox copy of offer of appointment issued in favour of Bhola Tirkey which has been filed by 2nd party union but not marked exhibit shows in para 18 that he (Bhola Tirkey) would be allowed to join duty, after he is medically found fit by the company medical officer. So when Bhola Tirkey & Karam Ch. Nag were found medically unfit for employment they were rightly not allowed to join under the Ist party. Similarly para 13 of the said offer of appointment reflects that the appointment would be liable to be summarily terminated without any notice in case the workman is found to have made any mis-statement & supressed any information in his application for employment. In the present case, the rest four workmen filed forged caste certificates said to have been issued by Tahasildar of Birmitrapur. So they were rightly not given appointment.

13. Issue No. II :—As discussed earlier, it is found from the evidence of W.W. No. 2, that Diba & Maga who were also working as driller under the Ist party—management were removed from service on medical ground. They compromised with the management & were paid Rs. 16,000 each. In his cross examination, M.W. No. 1 admitted the same. So the learned authorised representative of the 2nd party union submitted that when the case of these two workmen is same with the case of Bhola Tirkey and Karam Ch. Nag, the latter two should also be paid something. I would transgress the scope of reference if I ask the management to pay something to Bhola Tirkey & Karam Chand Nag only because Diba & Maga were paid

Rs. 16,000 each by the management in a compromise. In my view, none of the 2nd party workmen is entitled to any relief.

14. Therefore, under such facts & circumstances, it is held that the action of the Ist party management in terminating the services of the 2nd party workmen is legal and justified & as such they are not entitled to any relief. Accordingly the reference is answered. Parties to bear their own cost.

Dictated & corrected by me.

R. N. BISWAL, Presiding Officer

नई दिल्ली, 2 जुलाई, 1998

का.आ. 1435.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्टोमेंट बोर्ड, लखनऊ के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारो के बीच, अनुबंध में, निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-7-98 को प्राप्त हुआ था।

[सं. एल-13011/1/97-आई आर(डी.यू.)]

के.वी.बी. उण्णी, डैस्क अधिकारी

New Delhi, the 2nd July, 1998

S.O. 1435.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Cantonment Board, Lucknow and their workman, which was received by the Central Government on 2-7-1998.

[No. L-13011/1/97-IR(DU)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DEOKI PALACE ROAD, PANDU NAGAR, KANPUR

Industrial Dispute No. 237 of 1997

In the matter of dispute :

BETWEEN

General Secretary,
Zila Trade Union Counsel (INTUC),
Guljar Nagar,
P.O. Rajendra Nagar,
Lucknow.

AND

Cantonment Executive Officer,
Cantonment Board,
Lucknow.

AWARD

1. Central Government Ministry of Labour, New Delhi vide its Notification No. L-13011/1/97-IR (DU) dated 15-12-97 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management ot Cantonmenet Board Lucknow in terminating the service of Sh. Dharao Kumar Singh, is legal and justified ? If not to what relief the workman is entitled to ?

2. It is unnecessary to give the details of the case as after filing claim statement the concerned workman has not appeared before me for adducing his evidence. Hence the reference is answered against the concerned workman for want of prosecution and proof and he is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 9 जुलाई, 1998

का.आ. 1436.—कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) की धारा 17 की उपधारा (3) के खंड (क) का अनुसरण करते हुए और श्रम मंत्रालय, भारत सरकार की अधिसूचना सं का.आ. 3450 दिनांक 17 सितम्बर, 1964 का अधिक्रमण करते करते हुए केन्द्रीय सरकार एतद्द्वारा निर्देश देती है कि उक्त अधिनियम की धारा 17 के अधीन छूट प्राप्त किसी प्रतिष्ठान या किसी व्यक्ति या व्यक्ति वर्ग के संबंध में नियोजको के लिए पहली अगस्त, 1998 से वेतन (मूल मजदूरी, महंगाई भत्ता, अभिधारण भत्ता, यदि हो, और उस पर अनुज्ञेय भोजन रियायत की नगद कीमत) जो कि प्रतिष्ठान के कर्मचारियो को तत्समय देय हो या यथास्थिति व्यक्ति या व्यक्ति वर्गों द्वारा ग्राह्य हो, जिसके संबंध में अंशदान देय होता हो के शून्य दशमलव एक आठ प्रतिशत (0.18 प्रतिशत) की दर से निरीक्षण प्रभार अदा करना होगा, किन्तु ऐसी छूट की दशा में यह प्रभार—प्रत्येक माह के समाप्त होने के बाद पन्द्रह दिनों के भीतर अदा करना होगा।

2 संदेह को, समाप्त करने के लिए यह सूचित किया जाता है कि इस अधिसूचना में अन्तर्निहित कोई बात अधिसूचना का.आ. 3450, जिसका उल्लेख उक्त पैरा 1 में किया गया है, के अनुसार पहले अदा किये गये निरीक्षण प्रभार पर लागू नहीं हो और उक्त प्रयोजन के लिये अधिसूचना का. आ. सं. 3450 इस प्रकार प्रभावी बनी रहेगी मानो उसका अधिक्रमण न किया गया हो।

[फा. सं. जी-20017/1/98-एस.एस.-II]

जे. पी. शुक्ला, अवर सचिव

New Delhi, the 9th July, 1998

S.O. 1436.—In pursuance of clause (a) of sub-section (3) of Section 17 of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (19 of 1952) and in supersession of the notification of the Government of India in the Ministry of Labour No. S.O. 3450 dated the 17th September, 1964 the Central Government hereby directs that the employers in relation to an establishment or any person or class of persons exempted under Section 17 of the said Act, shall be required to pay to the Employees' Provident Funds with effect from the 1st August, 1998, inspection charges of the rate of zero point one eight per cent (0.18 per cent) of the pay (basic wages, dearness allowance, if any, and each value of food concession admissible thereon) for the time being payable to the employees of the establishment or receivable by the person or class of persons, as the case may be, in respect of which contributions would have been payable but for such exemption, within fifteen days of the close of every month.

2. For the removal of doubts, it is hereby notified that nothing contained in this notification shall affect the inspection charges already accrued in accordance with the notification S.O. 3450 referred to in paragraph 1 and for the said purpose the notification S.O. 3450 shall continue to apply as if the same had not been superseded.

[F. No. G-20017/1/98-SS-II]
J. P. SHUKLA, Under Secy.

नई दिल्ली, 9 जुलाई, 1998

का.आ. 1437.—कर्मचारी भविष्य निधि योजना, 1952 के पैराग्राफ 30 के स्पष्टीकरण और पैराग्राफ 39 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार, श्रम मंत्रालय की दिनांक 5 सितम्बर, 1986 की अधिसूचना स. का.आ. 3247 का अधिक्रमण करते हुए, केन्द्रीय सरकार एतद्द्वारा, केन्द्रीय बोर्ड से परामर्श करके तथा यह मानते हुए कि कर्मचारी भविष्य निधि में अपने सामान्य प्रशासनिक खर्चों को पूरा करने के लिए समाधन उपलब्ध है, उक्त योजना के पैराग्राफ 30 और पैराग्राफ 38 के उप पैराग्राफ (1) के प्रयोजनों के लिए 1 अगस्त, 1998 से प्रशासनिक प्रभार वेतन का 1.10 प्रतिशत (एक दशमलव एक शून्य प्रतिशत) नियत करती है, जैसा कि उक्त पैराग्राफों में संदर्भित किया गया है।

2. संदेह समाप्त करने के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि इस अधिसूचना में कहीं कोई बात 31 जुलाई, 1998 सहित दूसरी अवधि के संबंध में पैराग्राफ 1 में संदर्भित अधिसूचना के तहत अदा किए गए प्रशासनिक प्रभार को प्रभावी नहीं करेगी और यह इस तरह से प्रभाव में बना रहेगा जैसे कि उक्त अधिसूचना का अधिक्रमण न किया गया हो।

[फा.सं.जी.-20017/2/98-एस.एस.-II]
जे.पी. शुक्ला, अवर सचिव

New Delhi, the 9th July, 1998

S.O. 1437.—In exercise of the powers conferred by the Explanation to paragraph 30, and by paragraph 39 of the Employees Provident Funds Scheme, 1952 and in supersession of the notification of the Government of India, in the Ministry of Labour S.O. 3247, dated the 5th September, 1986, the Central Government, after consulting the Central Board and having regard to the resources of the Employees' Provident Fund available for meeting its normal administrative expenses, hereby fixes the administrative charges for the purpose of paragraph 30 and sub-paragraph (1) of paragraph 38 of the said Scheme, with effect from the 1st August, 1998 at 1.10 per cent (one point one zero per cent) of the pay as referred to in the said paragraphs.

2. For the removal of doubts, it is hereby notified that nothing contained in this notification shall affect the administrative charges payable in respect of the period upto and inclusive of the 31st July, 1998 in respect of which the notification referred to in paragraph 1 herein shall continue to supply as if the same had not been superseded.

[F. No. G-20017/1/98-SS-II]
J. P. SHUKLA, Under Secy.

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